

DEC 27 1978 12 02 AM

INTERSTATE COMMERCE COMMISSION

No.

Date DEC 27 1978

Fee \$50.00

ICC Washington, D. C.

Interstate Commerce Commission  
Washington, D.C.

Gentlemen:

Enclosed for recordation under the provisions of  
49 U.S.C. §11303 are the original and 15 counterparts of an  
Equipment Lease dated as of November 1, 1978.

A general description of the railroad equipment covered  
by the enclosed document is set forth in Schedule A attached to  
this letter and made a part hereof.

The names and addresses of the parties are:

Lessor: First Security State Bank  
c/o First Security Bank of Utah,  
N.A.  
79 South Main Street  
Salt Lake City, Utah 84111  
Attention: Corporate Trust  
Department

Lessee: Winchester and Western  
Railroad Company  
c/o UNIMIN Corporation  
Greenwich Office Park Four  
Greenwich, Connecticut 06830

The undersigned is the Lessor mentioned in the enclosed  
document and has knowledge of the matters set forth therein.

Please return the original and 13 copies of the Equip-  
ment Lease to Ronald E. Roden, Chapman and Cutler, 111 West Monroe  
Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$50.00 covering  
the required recording fee.

Very truly yours,

FIRST SECURITY STATE BANK,  
as Trustee

By

RECORDATION BR.

C.O.I.

LESSOR AS AFORESAID

Enclosures

RECEIVED

DEC 27 11 51 AM '78

DESCRIPTION OF ITEMS OF EQUIPMENT

TYPE A EQUIPMENT

Manufacturer of Type A  
Equipment:

Pullman Incorporated  
(Pullman Standard Division)

Description and Mark and  
Number of Type A Items  
of Equipment:

10 70-ton 50' Box cars, AAR  
Mechanical Designation XP,  
Marked and Numbered WW 2001  
through WW 2010, both inclusive

15 70-ton 50' Box cars, AAR  
Mechanical Designation XM,  
Marked and Numbered WW 2011  
through WW 2025, both inclusive

Estimated Purchase Price  
of Type A Equipment:

\$36,320 per Item (XP)  
\$35,445 per Item (XM)

Maximum Aggregate Purchase  
Price of Type A Equipment:

\$925,000

Place of Delivery:

Bessemer, Alabama

Outside Delivery Date:

January 15, 1979

(WWR Trust No. 78-1)

SCHEDULE A

DESCRIPTION OF ITEMS OF EQUIPMENT

TYPE B EQUIPMENT

Manufacturer of Type B  
Equipment:

Portec, Inc.

Description and Mark and  
Number of Type B Items  
of Equipment:

75 100-ton 3,000 cu. ft. Covered  
Hopper Cars Marked and Numbered  
WW 1001 through WW 1075,  
both inclusive

Estimated Purchase Price  
of Type B Equipment:

\$37,391 per Item

Maximum Aggregate Purchase  
Price of Type B Equipment:

\$2,869,202

Place of Delivery:

Clinton, Illinois

Outside Delivery Date:

September 15, 1979

(WWR Trust No. 78-1)

SCHEDULE A  
(continued)

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

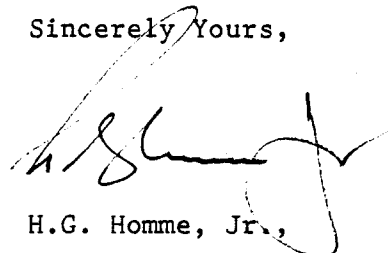
OFFICE OF THE SECRETARY

Ronald E. Roden  
Chapman and Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

Dear Mr. Roden:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on December 27, 1978 at 12:00 Noon, and assigned recordation number(s) 9943, 9943-A, 9944 and 9945

Sincerely Yours,



H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)

(continued)

DEC 7 1978

INTERNATIONAL RETENTION

EQUIPMENT LEASE

Dated as of November 1, 1978

Between

FIRST SECURITY STATE BANK,  
not in its individual capacity but solely as Trustee

LESSOR

And

WINCHESTER AND WESTERN RAILROAD COMPANY

LESSEE

---

(WWR Trust No. 78-1)  
(25 Box Cars and 75 Covered Hopper Cars)

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ATTACHMENTS TO EQUIPMENT LEASE:

Schedule A - Description of Items of Equipment,  
Type A and Type B

Schedule B - Certificate of Acceptance

Schedule C - Schedule of Casualty Value

Schedule D - Schedule of Termination Value



## EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of November 1, 1978 between FIRST SECURITY STATE BANK, a Utah banking corporation, not individually but solely as trustee (the "Lessor") under a Trust Agreement dated as of November 1, 1978 (the "Trust Agreement") with DIAL LEASING CORPORATION, an Iowa corporation (the "Trustor"), and WINCHESTER AND WESTERN RAILROAD COMPANY, a Virginia corporation (the "Lessee");

### R E C I T A L S:

A. Pursuant to a Conditional Sale Agreement dated as of November 1, 1978 (the "Conditional Sale Agreement") with Pullman Incorporated (Pullman Standard Division) and Portec, Inc. (collectively the "Manufacturers" and individually a "Manufacturer"), the Lessor has agreed to purchase the equipment referred to below in contemplation that, pursuant to the provisions hereof the Lessee would lease the same from the Lessor.

B. Pursuant to an Agreement and Assignment dated as of November 1, 1978 (the "Assignment") each Manufacturer has assigned its right, security title and interest under the Conditional Sale Agreement to First Security Bank of Utah, National Association, as Assignee (the "Assignee").

C. The Lessee, the Lessor, the Trustor and the Assignee intend to enter into a Participation Agreement dated as of November 1, 1978 (the "Participation Agreement") with Northwestern National Life Insurance Company (the "Permanent Investor"), Lease Investments Trust (the "Interim Investor"), UNIMIN Corporation (the "Guarantor"), providing for the commitment of the Lessor to acquire the equipment described in Schedule A hereto and made a part hereof. Said equipment is divided into two types: box cars and covered hopper cars. The box cars are hereinafter referred to collectively as the "Type A Equipment" and individually as a "Type A Item of Equipment", and the covered hopper cars are hereinafter referred to collectively as the "Type B Equipment" and individually as a "Type B Item of Equipment". The Type A Equipment and the Type B Equipment are hereinafter referred to collectively as the "Equipment" and individually as an "Item of Equipment". Under the Participation Agreement, the Interim Investor will commit to make certain investments for interim periods and the Permanent Investor will commit to make certain investments for a period of 18 years. It is contemplated that the Participation Agreement will provide that such investments will be secured by an

assignment of the Lessor's right, title and interest in and to this Lease and in and to the Equipment pursuant to the Conditional Sale Agreement and the Assignment.

## SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.

1.1. Intent to Lease and Hire. Upon delivery of each Item of Equipment pursuant to the Conditional Sale Agreement by the Manufacturer, the Lessee shall lease and let such Item of Equipment from the Lessor for the rental and on and subject to the terms and conditions herein set forth.

1.2. Inspection and Acceptance. The Lessor will cause each Item of Equipment to be tendered to the Lessee at the place of delivery set forth in Schedule A. Upon such tender, the Lessee will cause an inspector designated and authorized by the Lessee to inspect the same, and, if such Item of Equipment is found to be in good order, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor and the Manufacturer thereof a Certificate of Acceptance (the "Certificate of Acceptance") in the form attached hereto as Schedule B with respect to such Item of Equipment; provided, however, that the Lessee shall not accept and the Lessor shall have no obligation to lease any Item of Equipment delivered after the Outside Delivery Date therefor set forth in Schedule A.

1.3. Certificate of Acceptance. The Lessee's execution and delivery of a Certificate of Acceptance with respect to each Item of Equipment pursuant to Section 1.2 hereof shall conclusively establish that, as between the Lessor and the Lessee, but without limiting or otherwise affecting the Lessee's or the Lessor's rights, if any, against the Manufacturer thereof, such Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Item of Equipment is in good order and condition and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads applicable to new railroad equipment of the character of the Equipment as of the date of this Lease. By execution and delivery of such Certificate of Acceptance, the Lessee represents that it has no knowledge of any such defect.

## SECTION 2. RENTALS AND PAYMENT DATES.

2.1. Rent for Equipment. The Lessee agrees to pay the Lessor the following rent for each Item of Equipment:

(a) Interim Rental. For each Item of Equipment, an amount equal to the Purchase Price (as defined

in the Conditional Sale Agreement) thereof multiplied by the Per Diem Factor (as hereinafter defined) for each day during the period from and including the date of acceptance of delivery of such Item hereunder to, but not including, January 15, 1979 (the "Type A Term Lease Commencement Date") in the case of a Type A Item of Equipment, and September 15, 1979 (the "Type B Term Lease Commencement Date") in the case of a Type B Item of Equipment (said rentals being hereinafter referred to as the "Interim Rental"); and

(b) Fixed Rental. For each Item of Equipment, 216 monthly installments of fixed rental (the "Fixed Rental"), payable in arrears, each in an amount equal to 0.7636% of the Purchase Price thereof.

The term "Per Diem Factor" as of any day shall mean an amount determined by dividing the Prime Rate (as defined in the Conditional Sale Agreement) in effect on such day by 360.

2.2. Rental Payment Dates. The installment of Interim Rental, if any, for each Type A Item shall be due and payable on January 15, 1979 and for each Type B Item shall be due and payable on September 15, 1979. The first installment of Fixed Rental for each Type A Item shall be due and payable on February 15, 1979 and on the 15th day of each month thereafter to and including January 15, 1997. The first installment of Fixed Rental for each Type B Item shall be due and payable on October 15, 1979 and on the fifteenth day of each month thereafter to and including September 15, 1997. If any of the rent payment dates is not a business day, the rent payment otherwise payable on such date shall be payable on the next succeeding business day. For purposes of this Lease, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays on which banks in the States of Connecticut and Utah are authorized or required to close.

2.3. Adjustment of Rentals. In the event that any Type A Items of Equipment are delivered to and accepted by the Lessee under the Lease after December 31, 1978, then the Lessee and the Lessor agree that the Fixed Rentals shall be adjusted to such amount as shall, in the reasonable opinion of the Trustor, cause the Trustor's after-tax economic and accounting yields and cash flows (computed on the same assumptions, including tax rates, as were utilized by the Trustor in originally evaluating this transaction) to equal the after-tax economic and accounting yields and cash flows that would have been realized by the Lessor if the condition specified had not occurred, and the Casualty Values and Termination Values shall similarly be adjusted in amounts reasonably determined by the Trustor; provided, (A) that the Fixed Rental shall in no event be reduced below amounts required to discharge that portion of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) (other than prepayments

thereof required in respect of a Casualty Occurrence or an early termination pursuant to Section 11.4 hereof) and/or interest thereon due and payable on the due date of each such rental payment, and (B) that the Casualty Values and Termination Values shall in no event be reduced below amounts required (when taken together with the Fixed Rental then payable) to discharge that portion of the Conditional Sale Indebtedness and/or interest thereon due and payable on the date on which any Casualty Value or Termination Value shall be due and payable.

2.4. Place and Manner of Rent Payment. The payments to be made by the Lessee under this Lease shall be made as follows:

(a) The installments of Interim Rental shall be paid to the Lessor at the principal office of the Lessor at the address thereof provided for payments in Section 20.2 hereof; provided that in the event either the Lessor or the Assignee shall notify the Lessee in writing that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment to the place designated in such notice or as otherwise designated from time to time in writing by such assignee;

(b) Each installment of Fixed Rental shall be paid to the Lessor at the principal office of the Lessor at the address thereof provided for payments in Section 20.2 hereof; provided that in the event either the Lessor or the Assignee shall notify the Lessee in writing that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment to the place designated in such notice or as otherwise designated from time to time in writing by such assignee;

(c) The entire amount of any payment of Casualty Value or Termination Value pursuant to Section 11 hereof shall be paid to the Lessor (identifying the same as a payment of Casualty Value or Termination Value, as the case may be, relating to "WWR Trust No. 78-1") at the principal office of the Lessor at the address thereof provided for payments in Section 20.2 hereof; provided that in the event either the Lessor or the Assignee shall notify the Lessee in writing that the right to receive payment of such Casualty Value or Termination Value, as the case may be, shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment to the place designated in such notice or as otherwise designated from time to time in writing by such assignee;

(d) The amount of any payment owing to the Lessor or the Trustor pursuant to Sections 6, 10.2, 11.1 (with

respect to public liability insurance) and 20.3 hereof shall be made directly to the party to receive the same without regard to the assignment of this Lease pursuant to Section 16 hereof;

(e) The amount of any interest due in respect of the late payment of any rentals or other amounts pursuant to Section 19 hereof shall be paid to the party and in the manner herein provided to receive said rental or other amount; and

(f) All payments other than those above specified shall be made by the Lessee directly to the party to receive the same unless any such payment has previously been made by the Trustor, the Lessor or its assignee, in which case the Lessee shall reimburse the Trustor, the Lessor or its assignee, as the case may be, directly for such payment.

The Lessee agrees that it will make payments due hereunder by check of the Lessee drawn on a bank located in the continental United States and mailed to the party to receive the same at the address herein provided or at such other address as the Lessee shall have been previously advised in writing.

2.5. Net Lease. This Lease is a net lease and the Lessee's obligation to pay all Interim Rental and Fixed Rental and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of the Lessee against the Lessor or the Trustor under this Lease or otherwise or against any assignee of the Lessor pursuant to Section 16 hereof; nor except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor or the Trustor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment has been returned to the possession of the Lessor (for all purposes of this Lease any Item of Equipment shall not be deemed to have

been returned to the Lessor's possession until all of the Lessee's obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Items of Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or any assignee pursuant to Section 16 hereof for any reason whatsoever.

### SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each Type A Item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such Type A Item of Equipment and, subject to the provisions of Sections 11, 14 and 18 hereof, shall terminate on January 15, 1997. The term of this Lease as to each Type B Item of Equipment shall begin on the date of delivery to and acceptance by the Lessee of such Type B Item of Equipment and, subject to the provisions of Sections 11, 14 and 18 hereof, shall terminate on September 15, 1997.

### SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

4.1. Retention of Title. The Lessor is acquiring legal title to the Equipment as Vendee under the Conditional Sale Agreement (but only upon compliance with all the terms and conditions thereof) and it is understood that the Lessee shall acquire no right, title and interest to the Equipment except hereunder as Lessee notwithstanding the delivery of the Equipment to and the possession and use thereof by the Lessee.

4.2. Duty to Number and Mark Equipment. The Lessee will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Leased from a Bank or Trust Company,  
as Owner-Trustee and Subject to a  
Security Interest recorded with the  
Interstate Commerce Commission"

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will

replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of the new road number to be substituted therefor, which consent and statement previously shall have been delivered to the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

4.3. Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

#### SECTION 5. DISCLAIMER OF WARRANTIES.

THE LESSOR LEASES THE EQUIPMENT, AS-IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY EITHER THE LESSOR OR THE TRUSTOR, EACH EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, (D) THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (E) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the Manufacturer thereof, provided, however, that if at any time an Event of Default (as hereinafter defined) shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Item of Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Item of Equipment or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Item of Equipment. The

Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all Items of Equipment described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

## SECTION 6. LESSEE'S INDEMNITY.

6.1. Scope of Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor (in both its individual and fiduciary capacities), any assignee thereof pursuant to Section 16 hereof (including, without limitation, the Assignee) and the Trustor and their respective successors and assigns from and against:

(a) any and all loss or damage to the Equipment, usual wear and tear excepted; and

(b) any claim, cause of action, damages, liability, cost or expense (including, without limitation, counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to any Item of Equipment or any part thereof, including, without limitation, the construction, purchase, delivery, acceptance, rejection, ownership, sale, leasing, return or storage of any Item of Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessee or any indemnified party), (ii) by reason or as the result of any act or omission (whether negligent or otherwise) of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent, trademark or copyright infringements, or (iv) as a result of claims for negligence or strict liability in tort.

The indemnities and assumptions of liabilities set forth in this Section 6.1 do not guarantee a residual value in the Equipment nor do they guarantee the payment of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) or any interest accrued thereon.

6.2. Continuation of Indemnities and Assumptions. The indemnities and assumptions of liability set forth in this Section 6 shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i), (ii) or (iv) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the



Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Section 13 or 15, as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability.

Section 6.3. Patent Indemnities. The Lessee agrees to indemnify, protect and hold harmless each Manufacturer from and against any and all liabilities, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Manufacturer because of the use in or about the construction or operation of any Item of Equipment to be built by such Manufacturer of any design, formula, system or process specified by the Lessee and not developed or purported to be developed by such Manufacturer, or any article or material specified by the Lessee and not manufactured by such Manufacturer, which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. The Manufacturers are hereby designated third party beneficiaries to the undertakings of the Lessee set forth in this Section 6.3.

#### SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission and the current Interchange Rules or Supplements thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time) with respect to the use and maintenance of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be altered, added, replaced or modified on any Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, additions, replacements and/or modifications at its own expense and title thereto shall be immediately vested in the Lessor.

#### SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. Except as required by the provisions of Section 7 hereof, the Lessee shall not modify any Item of Equipment unless any additions in connection therewith are readily removable and the Lessee shall obtain the prior written authority and approval of the Lessor and any assignee pursuant to Section 16 hereof which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to Section 7 hereof or pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair under this Section 8

shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. The Lessee shall make no other additions or improvements to any Item of Equipment unless the same are readily removable without causing material damage to such Item of Equipment. Title to any such readily removable additions or improvements shall remain with the Lessee. If the Lessee shall at its cost cause such readily removable additions or improvements to be made to any Item of Equipment, the Lessee agrees that it will, prior to the return of such Item of Equipment to the Lessor hereunder, remove the same at its own expense without causing material damage to such Item of Equipment.

#### SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon any Item of Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor or the security interest or other rights of any assignee under Section 16 hereof in and to the Equipment. The Lessee's obligations under this Section 9 shall survive the termination of this Lease.

#### SECTION 10. FILING; PAYMENT OF STATE AND LOCAL TAXES.

10.1. Filing. Prior to the delivery and acceptance of the first Item of Equipment, the Lessee will, at its sole expense, cause this Lease and the Conditional Sale Agreement and the related Assignment (or a financing statement or similar notice thereof if and to the extent permitted or required by applicable law) to be duly filed, recorded or deposited with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303 and in such public offices and within or without the United States as the Lessor or the Assignee may reasonably request and will furnish the Lessor and the Assignee proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Assignee, for the purpose of protecting the Lessor's title to, or the Assignee's security interest in, any Item of Equipment to the satisfaction of the Lessor's or the Assignee's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor and the Assignee proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The

Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and re-recording or depositing and redepositing of any such instruments or incident to the taking of such action.

10.2. Payment of Non-Income Taxes. All payments to be made by the Lessee hereunder will be free of expenses to the Lessor, any assignee under Section 16 hereof (including, without limitation, the Assignee) and the Trustor (the "Indemnitees") for collection or other similar charges and will be free of expense to the Indemnitees with respect to the amount of any local, state, Federal or foreign taxes (other than any United States Federal income tax [and, to the extent that any respective Indemnatee receives credit therefor against its United States Federal income tax liability, any foreign income tax of such Indemnatee] payable by any respective Indemnatee in consequence of the receipt of payments provided herein and other than the aggregate of all state, city or local income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state, city and locality in which such Indemnatee has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement or the Assignment, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all Impositions which may be imposed upon any Item of Equipment or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon any Indemnatee solely by reason of its interest with respect thereto and will keep at all times all and every part of such Item of Equipment free and clear of all Impositions which might in any way affect the interest of any Indemnatee or result in a lien upon any such Item of Equipment; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the advance and reasonable opinion of any Indemnatee, adversely affect the title, property or rights of any Indemnatee; and provided further, however, that the Lessee shall not be required to pay any Imposition or reimburse any person for any loss, cost or expense related to any Imposition (i) attributable to any Item with respect to any period after possession of such Item has been returned to the Lessor or (ii) which is the subject of any lien, charge, security interest or other encumbrance which the Lessee is not required by Section 9 hereof to pay or discharge. If any Impositions shall have been charged or levied

against any Indemnatee directly and paid by such Indemnatee, the Lessee shall reimburse such Indemnatee on presentation of an invoice therefor if such Indemnatee shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for such Indemnatee) or the Lessee shall have approved the payment thereof. Prior to making such payment, such Indemnatee shall promptly notify the Lessee in writing of the Impositions charged or levied, and the Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such Impositions, at its sole expense.

In the event the Lessee may be prohibited by law or is impaired from contesting in its own name any Imposition covered by this Section 10.2 in respect of which the Lessee would otherwise be required to make payments to an Indemnatee pursuant hereto, such Indemnatee shall, upon request and at the expense of the Lessee, take all legal and other appropriate action reasonably requested by the Lessee to contest such Imposition. Such Indemnatee shall not be obligated to take any such action unless the Lessee shall first have indemnified such Indemnatee for all liabilities and expenses which may be entailed therein. The Lessee shall be entitled to any refund (plus interest, if any) received by any Indemnatee or the Lessee in respect of any Imposition paid by the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

In the event any reports with respect to Impositions are required to be made on the basis of individual Items of Equipment, the Lessee will either make such reports in such manner as to show the interests of each Indemnatee in such Items of Equipment or notify each Indemnatee of such requirement and make such reports in such manner as shall be satisfactory to such Indemnatee.

In the event that, during the continuance of this Lease, any Imposition accrues or becomes payable or is levied or assessed (or is attributable to the period of time during which this Lease is in existence) which the Lessee is or will be obligated to pay or reimburse, pursuant to this Section 10.2, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

#### SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE OR EARLY TERMINATION.

11.1. Insurance. The Lessee agrees that it will at all times during the term of this Lease and at its own cost and expense keep each Item of Equipment insured against loss by fire, windstorm and explosion and with extended coverage and against such other risks as are customarily insured against by companies owning property of a similar character and engaged in a business similar to that engaged in by the Lessee at not less than the full insurable value (actual replacement value less actual physical

depreciation) thereof, and will maintain general public liability insurance with respect to the Equipment against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than \$1,985,000 per occurrence and \$1,985,000 in the aggregate in any one year. Any such insurance may have applicable thereto deductible provisions to no greater extent than in effect for insurance coverage for equipment similar to the Equipment owned by the Lessee and in no event greater than \$25,000, in the case of public liability insurance, and \$5,000, in the case of property insurance on the Equipment, and may be carried under blanket policies maintained by the Lessee so long as such policies otherwise comply with the provisions of this Section 11.1. All such insurance shall cover both the interest of the Lessor and the Lessee in the Equipment or, as the case may be, shall protect the Lessor and the Lessee in respect of risks arising out of the condition, maintenance, use, ownership or operation of the Equipment and shall provide that losses, if any, in respect of the Equipment shall be payable to the Lessee and the Lessor as their respective interests may appear; provided, however, that upon receipt by the Lessee of notice of the assignment of this Lease and the rents and other sums payable hereunder, as provided in Section 16 hereof, the Lessee shall cause the insurance on the Equipment to provide that the losses, if any, shall be payable (except as provided below) to the Assignee under a standard mortgage loss payable clause, satisfactory to the Lessor and the Assignee, which shall provide that the insurer thereunder waives all rights of subrogation against the Lessor, the Lessee, the Trustor and the Assignee, that ten days' prior written notice of cancellation shall be given to the Assignee and that such insurance as to the interest of the Assignee therein shall not be invalidated by any act or neglect of the Lessor, the Lessee or the Trustor or by any foreclosure or other remedial proceedings or notices thereof relating to the Equipment or any interest therein nor by any change in the title or ownership of the Equipment or any interest therein or with respect thereto, or by the use or operation of the Equipment for purposes more hazardous or in a manner more hazardous than is permitted by such policy. All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as provided in this Lease. The Lessee shall furnish the Lessor with certificates or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal prior to the expiration date of the original policy or policies. All insurance provided for in this Section 11.1 shall be effected with insurance companies approved by the Lessor and the Assignee, which approval shall not be unreasonably withheld.

The proceeds of any insurance received by the Lessor or the Assignee on account of or for any loss or casualty in respect of any Item of Equipment shall be released to the Lessee either (i) upon a written application signed by the President, any Vice

President or the Treasurer of the Lessee for the payment of, or to reimburse the Lessee for the payment of, the cost of repairing or restoring the Item of Equipment which has been damaged (which application shall be accompanied by satisfactory evidence of such cost and of the completion of such repair or restoration), or (ii) if this Lease is terminated with respect to such Item of Equipment pursuant to Section 11.5 promptly upon payment by the Lessee of the Casualty Value to the Assignee; provided that, if the Lessee is at the time of the application in default in the payment of any other liability of the Lessee to the Lessor hereunder, such proceeds shall be applied against such liability.

11.2. Duty of Lessee to Notify Lessor. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged during the term of this Lease or thereafter while such Item of Equipment is in the possession or at the risk of the Lessee pursuant to Section 13 or 15 hereof, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease for a stated period which exceeds the then remaining term of this Lease (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor, any assignee thereof pursuant to Section 16 hereof (including, without limitation, the Assignee) and the Trustor in regard thereto and shall pay the Casualty Value (as defined in Section 11.7 hereof) of such Item in accordance with the terms of Section 11.3 hereof.

11.3. Sum Payable for Casualty Loss. The Lessee, on the next succeeding rent payment date following its knowledge of a Casualty Occurrence with respect to any Item or Items of Equipment, shall pay to the Lessor the Interim or Fixed Rental installment due on such payment date for such Item of Equipment plus any rentals or other sums due on or prior to such date then remaining unpaid plus a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment.

11.4. Early Termination. Upon not less than 180 days' prior written notice to the Lessor and the Assignee and so long as no Event of Default has occurred and is continuing, the Lessee may, at its sole option and for any reason whatsoever, terminate this Lease on January 15, 1991, or on the fifteenth day of any calendar month thereafter as to all (but not less than all) of the Type A Equipment, or on August 15, 1991 or on the fifteenth day of any calendar month thereafter as to all (but not less than all) of the Type B Equipment (the "Termination Date") upon payment of the amounts hereinafter provided. Such notice shall identify the Items of Equipment with respect to which this Lease is being terminated and the Termination Date on which payment will be made. On such Termination Date the Lessee shall pay to the Lessor the Fixed Rental installment due on such date for such Items of Equipment, plus any rentals or any other sums due on or prior to such date then remaining unpaid,

plus an amount equal to the Termination Value of such Items of Equipment as of such Termination Date, together with a premium equal to the following respective percentages of the Termination Value then being prepaid:

<u>Type A Equipment</u>		<u>Type B Equipment</u>	
If Prepaid in the 12-month period beginning January 15	Premium (Percentage of Termination Value)	If Prepaid in the 12-month period beginning September 15	Premium (Percentage of Termination Value)
1991	5.00%	1991	5.00%
1992	4.17%	1992	4.17%
1993	3.34%	1993	3.34%
1994	2.51%	1994	2.51%
1995	1.68%	1995	1.68%
1996	0.83%	1996	0.83%

11.5. Rent Termination. Upon (and not until) payment of all sums required to be paid pursuant to Section 11.3 or 11.4, as the case may be, hereof in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the Casualty Value or the Termination Value, as the case may be, payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

11.6. Disposition of Equipment. The Lessee shall, as agent for the Lessor, dispose of such Item or Items of Equipment for which settlement has been made pursuant to Section 11.3 or 11.4 as promptly as possible at the highest price reasonably obtainable for cash. Any such disposition shall be on an "as-is", "where-is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of, the Lessee (a) may retain all amounts arising from such disposition plus, in the case of a Casualty Occurrence any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence, up to the Casualty Value or, in the case of an early termination pursuant to Section 11.4, up to the Termination Value plus any premium paid pursuant to said Section 11.4, as the case may be, with respect to such Item and (b) shall remit the excess, if any, to the Lessor. In disposing of such Item of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after such disposition from or connected with such Item of Equipment.

11.7. Casualty Value. The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage

of the Purchase Price of such Item of Equipment set forth in the Schedule of Casualty Value attached hereto as Schedule C opposite such date of payment.

11.8. Termination Value. The Termination Value of each Item of Equipment shall be an amount determined as of the Termination Date as provided in Section 11.4 hereof equal to that percentage of the Purchase Price of such Item of Equipment set forth in the Schedule of Termination Value attached hereto as Schedule D for the Termination Date on which such Termination Value is to be paid.

11.9. Risk of Loss. The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to or any early termination pursuant to Section 11.4 hereof in respect of any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value or Termination Value, as the case may be, and all rental installments, premium, if any, and other sums due on and prior to the date of payment of such Casualty Value or Termination Value, as the case may be, in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

11.10. Eminent Domain. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay all installments of rental and other sums shall continue for the duration of such requisitioning or taking. Unless an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute an Event of Default shall have occurred and be continuing, the Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

## SECTION 12. ANNUAL REPORTS.

12.1. Duty of Lessee to Furnish. On or before May 1, 1979 and on May 1 of each year thereafter, the Lessee will furnish to the Lessor, any assignee thereof pursuant to Section 16 hereof (including, without limitation, the Assignee) and the Trustor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the 12 months ending on such December 31 (or since the



date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced. At the request of the Lessor, the Trustor or the Assignee, the Lessee will promptly furnish to each such party an accurate statement describing the insurance coverage, if any, maintained by the Lessee pursuant to Section 11.1 hereof.

12.2. Lessor's Inspection Rights. The Lessor, any assignee thereof pursuant to Section 16 hereof (including, without limitation, the Assignee and any Investor) and the Trustor each shall have the right, at their respective sole cost and expense, by their respective authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm thereto the existence and proper maintenance of the Equipment during the continuance of this Lease.

### SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the term of this Lease or any renewal hereof with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks as the Lessee may designate, for a period not exceeding 90 days and transport the same at any time within such 90-day period to such destination as directed by the Lessor upon not less than 30 days' written notice to the Lessee. As to each such Item of Equipment so returned to Lessor, Lessee shall be in compliance with the provisions of Section 8 hereof. All movement and storage of each such Item is to be at the risk of the Lessee. The cost of storage and transportation of each such Item shall be borne equally by the Lessor and the Lessee; provided, however, that if storage of such Item is obtained at no cost to the Lessee and the Lessor, the cost of transportation payable by the Lessee with respect to such Item shall be reduced by the Fair Market Storage Value of such Item. For purposes of this Section 13, Fair Market Storage Value of an Item shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee of storage tracks similar to those so obtained and an informed and willing lessor of such storage tracks under no compulsion to lease. If the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Storage Value of an Item, such value shall be determined in accordance with the appraisal procedure set forth in Section 18.2 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the

Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. During any such storage period the Lessee shall maintain the Equipment as provided in Section 8 hereof and the Lessee shall maintain the insurance required by Section 11.1 hereof and maintain the Items of Equipment in such manner as the Lessee normally maintains similar equipment owned or leased by it in similar storage circumstances. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment. If this Lease shall not be renewed at the end of the then current term (whether the original or a renewal term), all amounts earned in respect of any Item of Equipment after such current term shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Item of Equipment is not assembled, delivered and stored, as hereinabove provided, on the final day of said current term the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount, if any, equal to the excess of (a) the higher of (i) 1/30 of the Fixed Rental installment which was payable on the most recent payment date therefor pursuant to Section 2.1(b) hereof, or (ii) 1/30 of the monthly Fair Rental Value (determined in the manner provided in Section 18 hereof) over (b) the actual earnings received by the Lessor in respect of such Item pursuant to the next preceding sentence for such day.

#### SECTION 14. DEFAULT.

14.1. Events of Default. Any of the following events shall constitute an Event of Default hereunder:

(a) Default shall be made in the payment of any part of the rental or Casualty Value or Termination Value provided in Section 2 or 11 hereof and such default shall continue for five days;

(b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof;

(c) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement and such default shall continue for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied;

(d) The Guarantor shall default in the obligations or performance of any covenant to be observed or performed by the Guarantor under the Guaranty Agreement or the Participation Agreement, and such default (other than a default in the payment of any part of the rental provided for in Section 2 hereof) shall continue for 30 days after the Guarantor shall have obtained knowledge of the same;

(e) Any representation or warranty made (i) by the Lessee herein or in the Participation Agreement or in any statement or certificate furnished to the Lessor, the Trustor, the Assignee or the Investor pursuant to or in connection with this Lease or the Participation Agreement is untrue in any material respect as of the date of issuance or making thereof and shall continue to be untrue, or (ii) by the Guarantor in or pursuant to or in connection with the Guaranty Agreement executed by the Guarantor in respect of the obligations and liabilities under this Lease or in the Participation Agreement or in any statement or certificate furnished to the Lessor, the Trustor, the Assignee or the Investor pursuant to or in connection with this Lease, the Guaranty Agreement or the Participation Agreement proves untrue in any material respect as of the date of issuance or making thereof and shall continue to be untrue;

(f) The Lessee or the Guarantor shall become insolvent or bankrupt or admit in writing its inability to pay its debts as they mature or shall make an assignment for the benefit of its creditors;

(g) Any proceedings shall be commenced by or against the Lessee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or of the Guarantor under the Guaranty Agreement under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustment of such obligations of the Lessee or the Guarantor, as the case may be) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective within 60 days (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations of the Lessee and the Guarantor shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not

subject to ratification) for the Lessee and/or the Guarantor or for the property of the Lessee and/or the Guarantor in connection with any such proceedings, in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

(h) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by such trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(i) Default shall be made in the payment of the principal of or interest on the indebtedness of the Lessee evidenced by its 8% Bond, dated March 1, 1976, in the original principal amount of \$205,000 payable in ten (10) equal annual installments commencing September 1, 1978.

14.2. Remedies. If any Event of Default has occurred and is continuing, the Lessor or, in the event this Lease shall be assigned to an assignee pursuant to Section 16 hereof, such assignee, at its option, may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including reasonable attorneys' fees and other costs and expenses incurred in such proceedings; or

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises

where any of the Equipment may be located and take possession of all or any of the Items of Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use such Items for any purpose whatever, but the Lessor shall nevertheless have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum with respect to each Item of Equipment which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then Fair Rental Value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of such Item during such period, such present worth to be computed in each case on a basis of an 8% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess of any of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the amount the Lessor reasonably estimates to be the Fair Market Value thereof at such time; provided, however, that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (i) with respect thereto may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the net proceeds of such sale after deducting all costs and expenses of such sale, and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto, including reasonable attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease.

For purposes of Section 14.2 above, the Fair Rental Value for any Item of Equipment shall be determined in the appraisal arrangements specified in Section 18.2(b) hereof and the Fair Market Value for any Item of Equipment shall be determined in a similar manner with appropriate adjustments for sale rather than rental, with any appraisal expenses to be borne by the Lessee; provided that any sale in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Market Value of such Item and any rental in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Rental Value of such Item.

14.3. Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

14.4. Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

14.5. Notice of Event of Default. The Lessee also agrees to furnish to the Lessor, the Trustor and the Assignee, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 14.5 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

## SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1. Lessee's Duty to Return. If the Lessor or any assignee pursuant to Section 16 hereof shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of

delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith assemble and place each such Item of Equipment upon such storage tracks within a 25-mile radius of Chicago, Illinois, Minneapolis, Minnesota, St. Louis, Missouri, or Richmond, Virginia, as the Lessor may designate or, in the absence of such designation, as the Lessee may select;

(b) Provide storage at the risk of the Lessee for each such Item of Equipment on such tracks until the same has been sold, leased or otherwise disposed of by the Lessor; and

(c) Transport any Items of Equipment to any place of interchange on the lines of a railroad within a 25-mile radius of such storage tracks, all as the Lessor may reasonably direct upon not less than 30 days' written notice to the Lessee.

All amounts earned in respect of the Equipment after the date of termination pursuant to Section 14 hereof shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event the Equipment is not assembled, delivered and stored, as hereinabove provided, on the date of termination pursuant to Section 14 hereof, the Lessee shall, in addition to the remedies of the Lessor provided for in Section 14 hereof, pay to the Lessor for each day thereafter an amount equal to the higher of (i) 1/30 of the Fixed Rental installment which was payable on the most recent payment date therefor pursuant to Section 2.1(b) hereof, or (ii) 1/30 of the monthly Fair Rental Value (determined in the manner provided in Section 18 hereof).

15.2. Specific Performance. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

15.3. Lessor Appointed Lessee's Agent. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to the Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item.

## SECTION 16. ASSIGNMENTS BY LESSOR.

This Lease and all rent and other sums due and to become due hereunder may be assigned in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon notice to the Lessee of any such assignment, the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's title, or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of such assignee, the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment, (ii) said assignee shall, if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of said assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor (except those rights, privileges and remedies relating to amounts payable to the Lessor or the Trustor pursuant to Sections 6, 10.2, 11.1 [with respect to public liability insurance] and 20.3 hereof which shall remain enforceable by the Lessor and/or the Trustor, as the case may be), but if no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, said assignee, the Lessor and the Trustor may each exercise their respective rights, privileges and remedies stated in this Lease to be provided for their respective benefits, and (iii) all obligations of the Lessor to the Lessee under this Lease shall be and remain enforceable by the Lessee against, and only against, the Lessor.

It is understood and agreed that the right, title and interest of any such assignee in, to and under this Lease and the rents and other sums due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of the Lessee in and to the Equipment.



## SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

17.1. Lessee's Rights to the Equipment. So long as no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

17.2. Use and Possession. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the quiet use, possession and enjoyment of the Equipment; provided, however, that nothing contained in this Lease shall be deemed to prohibit the use of the Equipment by others in the usual interchange of traffic. Notwithstanding the foregoing, the Lessee will not assign any Item of Equipment to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee agrees that it will not, without the prior written consent of the Lessor, assign this Lease or any of its rights hereunder or sublease any Item of Equipment. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder, all of which shall be and remain those of a principal and not a surety.

17.3. Merger, Consolidation or Acquisition of Lessee. Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation into or with which the Lessee shall have become merged or consolidated, provided that such assignees, successors or transferees shall have duly assumed the obligations of the Lessee hereunder and that they will not, upon the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Lease and that such merger or consolidation or acquisition of properties shall not alter in any way the Lessee's obligations to the Lessor hereunder which shall be and remain those of a principal and not a guarantor.

## SECTION 18. RIGHT OF FIRST REFUSAL; RENEWAL OPTIONS.

18.1. Right of First Refusal. Unless an Event of Default, or any event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, the Lessor shall not, prior to the end of the original term of this Lease for any Type of Equipment (or, if the Lessee has renewed this Lease for a renewal

term pursuant to Section 18.2 hereof, prior to the end of such renewal term), or at any time thereafter, sell, transfer or otherwise dispose of any Item of Equipment of such Type unless:

(a) the Lessor shall have received from a responsible purchaser or purchasers a bona fide offer or offers in writing to purchase in the aggregate all, but not less than all, of the Items of Equipment of such Type;

(b) the Lessor shall have given the Lessee written notice (i) setting forth in detail the identity of such purchaser or purchasers, the proposed purchase price or prices, the proposed date of purchase and all other material terms and conditions of such purchase, including, without limitation, any arrangements for the financing of such purchase known to the Lessor, and (ii) offering to sell all Items of Equipment of such Type to the Lessee upon the same terms and conditions as those set forth in such notice; and

(c) the Lessor shall not have received from the Lessee notice, within 20 days following the notice referred to in clause (b) of this Section 18.1, of its election to purchase all Items of Equipment of such Type upon such terms and conditions.

If the Lessee shall not have so elected to purchase all Items of Equipment of such Type, the Lessor may sell such Items of Equipment at a price and upon other terms and conditions no less favorable to the Lessor than those specified in such notice. Notwithstanding the foregoing provisions of this Section 18.1, the Lessor may, if the Lessee has not renewed this Lease pursuant to Section 18.2 hereof, lease any Item of Equipment of such Type at any time after the end of the original term of this Lease (or, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18.2 hereof, at the end of such renewal term) without first offering to lease the Equipment to the Lessee.

18.2. Renewal Options. Provided that no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall have the following renewal options:

(a) The Lessee shall have the option to renew and extend this Lease as to all, but not less than all, of the Type A Items of Equipment or the Type B Items of Equipment, or both, then leased hereunder for additional renewal terms of three (3) years each upon and subject to the terms and conditions herein contained for the original term of this Lease; provided that the Fixed Rental payable for

and during any such renewal term shall be an amount equal to the Fair Rental Value (as hereinafter defined) of such Items of Equipment. Each renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor written notice of any such election 180 days prior to the commencement of any renewal term provided for in this Section 18.2; and

(b) The Fair Rental Value of an Item of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease. If on or before 90 days prior to the date of commencement of the renewal term elected by the Lessee, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Item of Equipment, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term "Appraiser" shall mean two independent appraisers, one chosen by the Lessor and one chosen by the Lessee, or, if such appraisers cannot agree on the amount of such value within 60 days prior to the date of commencement of the renewal term elected by the Lessee, determined on the basis of an appraisal made by a third appraiser chosen by the American Arbitration Association. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

18.3. Delivery of Equipment. Unless the Lessee has elected to purchase the Type A Items of Equipment or the Type B Items of Equipment, as the case may be, then leased hereunder or to renew this Lease in respect of such Items of Equipment as provided in this Section 18, all of such Items of Equipment shall be returned to the Lessor at the end of the original term, or the then current renewal term, as the case may be, in accordance with Section 13 hereof.

#### SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNTS PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding, any nonpayment of rent due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay also an amount equal

to 11.50% per annum (or the highest lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

## SECTION 20. MISCELLANEOUS.

20.1. Limitations of Liability. It is expressly understood and agreed by and between the Lessor and the Lessee and their respective successors and assigns that this Lease is executed by First Security State Bank, not individually or personally but solely as Trustee under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Trustee, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security State Bank or the Trustor, or for the purpose or with the intention of binding First Security State Bank or the Trustor personally, but are made and intended for the purpose of binding only the Trust Estate as defined in the Trust Agreement, that this Lease is executed and delivered by First Security State Bank solely in the exercise of the powers expressly conferred upon First Security State Bank, as trustee under the Trust Agreement, that actions to be taken by the Lessor pursuant to its obligations hereunder may, in certain instances, be taken by the Lessor only upon specific authority of the Trustor, that, except in the case of gross negligence or wilful misconduct of First Security State Bank or the Trustor, nothing herein contained shall be construed as creating any liability on First Security State Bank or the Trustor, individually or personally, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of, First Security State Bank or the Trustor, to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Lessee and by each and every person now or hereafter claiming by, through or under the Lessee, and that so far as First Security State Bank or the Trustor, individually or personally are concerned, the Lessee and any person claiming by, through or under the Lessee shall look solely to the Trust Estate as defined in the Trust Agreement for the performance of any obligation under this Lease; provided that nothing in this Section 20.1 shall be construed to limit in scope or substance those representations, warranties and agreements of First Security State Bank in its individual capacity set forth in the Participation Agreement. The term "Lessor" as used in this Lease shall include any trustee succeeding First Security State Bank as trustee under the Trust Agreement or the Trustor if the trust created thereby is revoked. Any obligation of the Lessor hereunder may be performed by the Trustor, and any such performance shall not be construed as revocation of the trust created by the Trust Agreement. Nothing contained in this Lease shall restrict the operation of the provisions of the Trust Agreement with respect to its revocation or the resignation or removal of the Trustee thereunder.

20.2. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class, postage prepaid, addressed as follows:

If to the Lessor: First Security State Bank  
c/o First Security Bank of Utah, N.A.  
79 South Main Street  
Salt Lake City, Utah 84111  
Attention: Corporate Trust Department  
  
(with a copy to the Trustor)

If to the Trustor: Dial Leasing Corporation  
207 Ninth Street  
Des Moines, Iowa 50317  
Attention: Mike J. Keller, Esq.

If to the Assignee: First Security Bank of Utah, N.A.  
79 South Main Street  
Salt Lake City, Utah 84111  
Attention: Corporate Trust Department

If to the Lessee: Winchester and Western  
Railroad Company  
c/o UNIMIN Corporation  
Greenwich Office Park Four  
Greenwich, Connecticut 06830  
Attention: Mr. Kevin Crawford,  
Vice President-Finance

If to the  
Guarantor: UNIMIN Corporation  
Greenwich Office Park Four  
Greenwich, Connecticut 06830  
Attention: Mr. Kevin Crawford,  
Vice President-Finance

or addressed to any such party at such other address as such party shall hereafter furnish to such other parties in writing.

20.3. Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, either the Lessor, the Trustor or, in the case of an assignment by the Lessor pursuant to Section 16 hereof, the assignee thereunder may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance. Any payment so made by any such party and all cost and expense (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the party making the same upon demand as additional rent hereunder, with interest at the rate of 11.50% per annum.

20.4. Execution in Counterparts. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

20.5. Law Governing. This Lease shall be construed in accordance with the laws of the State of Virginia; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation.

20.6. Headings and Table of Contents. All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

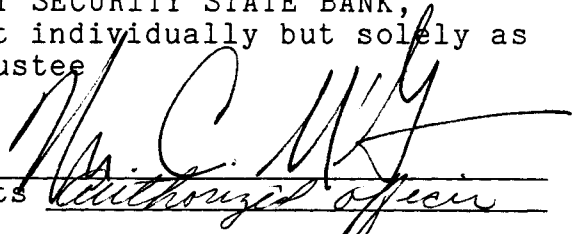
20.7. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be as to such jurisdiction ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and the corporate seals to be hereto affixed as of the day and year first above written.

FIRST SECURITY STATE BANK,  
not individually but solely as  
Trustee


By

Its

  
Authorized officer

[CORPORATE SEAL]

ATTEST:

  
Assistant Secretary

WINCHESTER AND WESTERN  
RAILROAD COMPANY

By

Its

[CORPORATE SEAL]

ATTEST:

Secretary

STATE OF UTAH                    )  
                                  )    SS  
COUNTY OF SALT LAKE        )

On this 22 day of December, 1978, before me personally appeared WILLIAM C. MCGREGOR, to me personally known, who, being by me duly sworn, says that he is the Authorized Officer of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Tenna J. McCor*  
Notary Public

[NOTARIAL SEAL]

My Commission Expires:  
My Commission Expires November 15, 1981

STATE OF CONNECTICUT        )  
                                  )    SS  
COUNTY OF FAIRFIELD        )

On this \_\_\_\_\_ day of December, 1978, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is the \_\_\_\_\_ of WINCHESTER AND WESTERN RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

DESCRIPTION OF ITEMS OF EQUIPMENT

TYPE A EQUIPMENT

Manufacturer of Type A  
Equipment:

Pullman Incorporated  
(Pullman Standard Division)

Description and Mark and  
Number of Type A Items  
of Equipment:

10 70-ton 50' Box cars, AAR  
Mechanical Designation XP,  
Marked and Numbered WW 2001  
through WW 2010, both inclusive

15 70-ton 50' Box cars, AAR  
Mechanical Designation XM,  
Marked and Numbered WW 2011  
through WW 2025, both inclusive

Estimated Purchase Price  
of Type A Equipment:

\$36,320 per Item (XP)  
\$35,445 per Item (XM)

Maximum Aggregate Purchase  
Price of Type A Equipment:

\$925,000

Place of Delivery:

Bessemer, Alabama

Outside Delivery Date:

January 15, 1979

(WWR Trust No. 78-1)



DESCRIPTION OF ITEMS OF EQUIPMENT

TYPE B EQUIPMENT

Manufacturer of Type B Equipment:	Portec, Inc.
Description and Mark and Number of Type B Items of Equipment:	75 100-ton 3,000 cu. ft. Covered Hopper Cars Marked and Numbered WW 1001 through WW 1075, both inclusive
Estimated Purchase Price of Type B Equipment:	\$37,391 per Item
Maximum Aggregate Purchase Price of Type B Equipment:	\$2,869,202
Place of Delivery:	Clinton, Illinois
Outside Delivery Date:	September 15, 1979

(WWR Trust No. 78-1)

CERTIFICATE OF ACCEPTANCE  
UNDER EQUIPMENT LEASE

TO: First Security State Bank,  
as Trustee under WWR Trust No. 78-1

I, a duly appointed and authorized representative of Winchester and Western Railroad Company (the "Lessee") under the Equipment Lease dated as of November 1, 1978 (the "Lease") between the Lessor and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery under the Lease of the following Items of Equipment:

TYPE OF EQUIPMENT:

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that the foregoing Items of Equipment are in good order and condition, and appear to conform to the specifications applicable thereto, that the Lessee has no knowledge of any defect in any of the foregoing Items of Equipment with respect to design, manufacture, condition or in any other respect, and that each Item has been labeled by means of a plate or a stencil printed in contrasting colors upon each side of the Item in letters not less than one inch in height as follows:

"Leased from a Bank or Trust Company,  
as Owner-Trustee and Subject to a  
Security Interest Recorded with the  
Interstate Commerce Commission"

The execution of this Certificate will in no way relieve or decrease the responsibility of the Manufacturer for any warranties it has made with respect to the Equipment.

Dated: \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
Inspector and Authorized  
Representative of the Lessee

(WWR Trust No. 78-1)

SCHEDULE B  
(to Equipment Lease)

## SCHEDULE OF CASUALTY VALUE

The Casualty Value for a Type A Item of Equipment or a Type B Item of Equipment, as the case may be, payable on the Interim or any Fixed Rental payment date thereafter for such Item shall mean an amount equal to the percent of the Purchase Price of such Item set forth opposite such date in the following schedule (as the same may be increased pursuant to Annex 1 to this Schedule C):

<u>Date on which Casualty Value is Paid</u>	<u>Percentage of Purchase Price Payable as Casualty Value</u>	
	<u>Type A Item of Equipment</u>	<u>Type B Item of Equipment</u>
1/15/79	87.0096%	--
2/15/79	87.2816	--
3/15/79	87.5569	--
4/15/79	87.8353	--
5/15/79	88.0826	--
6/15/79	88.3327	--
7/15/79	88.5513	--
8/15/79	88.7726	--
9/15/79	88.9965	86.9814%
10/15/79	89.1886	87.3247
11/15/79	89.3830	87.6714
12/15/79	89.5799	88.0215
1/15/80	89.7446	88.2501
2/15/80	89.9114	88.4810
3/15/80	90.0803	88.7141
4/15/80	90.2513	88.9495
5/15/80	90.3951	89.1567
6/15/80	90.5409	89.3659
7/15/80	90.6592	89.5466
8/15/80	90.7792	89.7292
9/15/80	90.9007	89.9135
10/15/80	90.9947	90.0691
11/15/80	91.0899	90.2263
12/15/80	91.1865	90.3851
1/15/81	91.2553	90.5148
2/15/81	91.3251	90.6459
3/15/81	91.3959	90.7784
4/15/81	91.4679	90.9122
5/15/81	91.5155	91.0219
6/15/81	91.5641	91.1327
7/15/81	91.5881	91.2192
8/15/81	91.6127	91.3066
9/15/81	91.6379	91.3950
10/15/81	91.6383	91.4588

Date on which  
Casualty Value is Paid

Percentage of Purchase Price  
Payable as Casualty Value

	<u>Type A Item of Equipment</u>	<u>Type B Item of Equipment</u>
11/15/81	91.6391%	91.5233%
12/15/81	91.6403	91.5885
1/15/82	91.6164	91.6289
2/15/82	91.5927	91.6699
3/15/82	91.5691	91.7114
4/15/82	91.5455	91.7534
5/15/82	91.5007	91.7737
6/15/82	91.4557	91.7945
7/15/82	91.3891	91.7934
8/15/82	91.3222	91.7924
9/15/82	91.2550	91.7916
10/15/82	91.1660	91.7688
11/15/82	91.0764	91.7459
12/15/82	90.9862	91.7229
1/15/83	90.8741	91.6777
2/15/83	90.7610	91.6323
3/15/83	90.6472	91.5865
4/15/83	90.5326	91.5405
5/15/83	90.3997	91.4755
6/15/83	90.2658	91.4101
7/15/83	90.1133	91.3255
8/15/83	89.9597	91.2403
9/15/83	89.8048	91.1544
10/15/83	89.6313	91.0492
11/15/83	89.4563	90.9432
12/15/83	89.2798	90.8363
1/15/84	89.0844	90.7099
2/15/84	88.8874	90.5825
3/15/84	88.6887	90.4540
4/15/84	88.4883	90.3245
5/15/84	88.2729	90.1788
6/15/84	88.0556	90.0319
7/15/84	87.8230	89.8687
8/15/84	87.5883	89.7041
9/15/84	87.3516	89.5381
10/15/84	87.1009	89.3555
11/15/84	86.8479	89.1715
12/15/84	86.5928	88.9858
1/15/85	86.3354	88.7835
2/15/85	86.0759	88.5794
3/15/85	85.8140	88.3736
4/15/85	85.5498	88.1660
5/15/85	85.2834	87.9451
6/15/85	85.0146	87.7223
7/15/85	84.7435	87.4861
8/15/85	84.4700	87.2479
9/15/85	84.1941	87.0075
10/15/85	83.9159	86.7537

Date on which  
Casualty Value is Paid

Percentage of Purchase Price  
Payable as Casualty Value

	<u>Type A Item of Equipment</u>	<u>Type B Item of Equipment</u>
11/15/85	83.6351%	86.4975%
12/15/85	83.3520	86.2392
1/15/86	83.0664	85.9722
2/15/86	82.7783	85.7029
3/15/86	82.4877	85.4313
4/15/86	82.1945	85.1572
5/15/86	81.8988	84.8808
6/15/86	81.6006	84.6019
7/15/86	81.2997	84.3206
8/15/86	80.9962	84.0369
9/15/86	80.6900	83.7507
10/15/86	80.3812	83.4619
11/15/86	80.0697	83.1707
12/15/86	79.7554	82.8768
1/15/87	79.4384	82.5805
2/15/87	79.1187	82.2815
3/15/87	78.7962	81.9799
4/15/87	78.4708	81.6757
5/15/87	78.1426	81.3688
6/15/87	77.8116	81.0592
7/15/87	77.4776	80.7469
8/15/87	77.1408	80.4319
9/15/87	76.8010	80.1141
10/15/87	76.4583	79.7936
11/15/87	76.1125	79.4702
12/15/87	75.7637	79.1440
1/15/88	75.4119	78.8150
2/15/88	75.0571	78.4831
3/15/88	74.6991	78.1482
4/15/88	74.3380	77.8105
5/15/88	73.9737	77.4698
6/15/88	73.6063	77.1261
7/15/88	73.2357	76.7794
8/15/88	72.8618	76.4296
9/15/88	72.4847	76.0769
10/15/88	72.1042	75.7210
11/15/88	71.7205	75.3620
12/15/88	71.3334	74.9998
1/15/89	70.9429	74.6345
2/15/89	70.5491	74.2660
3/15/89	70.1517	73.8943
4/15/89	69.7510	73.5193
5/15/89	69.3467	73.1411
6/15/89	68.9389	72.7595
7/15/89	68.5275	72.3746
8/15/89	68.1125	71.9863
9/15/89	67.6939	71.5946

Date on which  
Casualty Value is Paid

Percentage of Purchase Price  
Payable as Casualty Value

	<u>Type A Item of Equipment</u>	<u>Type B Item of Equipment</u>
10/15/89	67.2717%	71.1995%
11/15/89	66.8457	70.8010
12/15/89	66.4161	70.3989
1/15/90	65.9827	69.9934
2/15/90	65.5465	69.5843
3/15/90	65.1075	69.1716
4/15/90	64.6657	68.7553
5/15/90	64.2209	68.3353
6/15/90	63.7734	67.9117
7/15/90	63.3228	67.4844
8/15/90	62.8694	67.0533
9/15/90	62.4130	66.6185
10/15/90	61.9536	66.1798
11/15/90	61.4911	65.7374
12/15/90	61.0257	65.2910
1/15/91	60.5571	64.8407
2/15/91	60.0867	64.3865
3/15/91	59.6143	63.9284
4/15/91	59.1401	63.4681
5/15/91	58.6638	63.0057
6/15/91	58.1857	62.5413
7/15/91	57.7055	62.0777
8/15/91	57.2233	61.6090
9/15/91	56.7392	61.1381
10/15/91	56.2529	60.6679
11/15/91	55.7647	60.1925
12/15/91	55.2744	59.7150
1/15/92	54.7820	59.2380
2/15/92	54.2876	58.7559
3/15/92	53.7912	58.2715
4/15/92	53.2928	57.7852
5/15/92	52.7924	57.2969
6/15/92	52.2899	56.8066
7/15/92	51.7853	56.3183
8/15/92	51.2787	55.8240
9/15/92	50.7700	55.3277
10/15/92	50.2591	54.8332
11/15/92	49.7461	54.3327
12/15/92	49.2310	53.8301
1/15/93	48.7136	53.3293
2/15/93	48.1943	52.8225
3/15/93	47.6728	52.3135
4/15/93	47.1492	51.8025
5/15/93	46.6235	51.2894
6/15/93	46.0957	50.7742
7/15/93	45.5657	50.2612
8/15/93	45.0336	49.7418

Date on which  
Casualty Value is Paid

Percentage of Purchase Price  
Payable as Casualty Value

	<u>Type A Item of Equipment</u>	<u>Type B Item of Equipment</u>
9/15/93	44.4992%	49.2203%
10/15/93	43.9627	48.7008
11/15/93	43.4239	48.1749
12/15/93	42.8829	47.6469
1/15/94	42.3396	47.1208
2/15/94	41.7942	46.5883
3/15/94	41.2466	46.0537
4/15/94	40.6968	45.5169
5/15/94	40.1448	44.9780
6/15/94	39.5906	44.4369
7/15/94	39.0341	43.8979
8/15/94	38.4754	43.3525
9/15/94	37.9144	42.8048
10/15/94	37.3512	42.2591
11/15/94	36.7855	41.7069
12/15/94	36.2176	41.1525
1/15/95	35.6472	40.5998
2/15/95	35.0739	40.0408
3/15/95	34.4976	39.4794
4/15/95	33.9183	38.9158
5/15/95	33.3358	38.3499
6/15/95	32.7503	37.7818
7/15/95	32.1673	37.2159
8/15/95	31.5764	36.6433
9/15/95	30.9814	36.0683
10/15/95	30.3944	35.4954
11/15/95	29.7994	34.9157
12/15/95	29.1965	34.3337
1/15/96	28.6053	33.7535
2/15/96	28.0085	33.1667
3/15/96	27.4060	32.5775
4/15/96	26.7978	31.9844
5/15/96	26.2055	31.3928
6/15/96	25.6075	30.7946
7/15/96	25.0256	30.2077
8/15/96	24.4381	29.6142
9/15/96	23.8452	29.0141
10/15/96	23.2683	28.4253
11/15/96	22.6861	27.8300
12/15/96	22.0984	27.2279
1/15/97	20.0000	26.6373
2/15/97	--	26.0400
3/15/97	--	25.4361
4/15/97	--	24.8266
5/15/97	--	24.2491
6/15/97	--	23.6664
7/15/97	--	23.1158
8/15/97	--	22.5603
9/15/97	--	20.0000

ANNEX 1 TO SCHEDULE C  
(to Equipment Lease)

The percentages set forth in Schedule C have been computed without regard to recapture of the Investment Credit provided for in Section 38 and related sections of the Internal Revenue Code of 1954, as amended. Consequently, the Casualty Value of any Item of Equipment suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and acceptance of such Item shall be increased by the applicable percentage of the Purchase Price set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>	
	<u>Type A Item of Equipment</u>	<u>Type B Item of Equipment</u>
3 (on or prior to 12/31/78)	20.4082%	
(after 12/31/78)	19.6078	19.6079%
5	13.0720	13.0719
7	6.5358	6.5360



## SCHEDULE OF TERMINATION VALUE

The Termination Value for a Type A Item of Equipment or Type B Item of Equipment, as the case may be, payable on the Interim or any Fixed Rental payment date thereafter for such Item shall mean an amount equal to the percent of the Purchase Price of such Item set forth opposite such date in the following schedule before taking into account any premium, if any, as set forth in Section 11.4 of the Lease:

<u>Date on which Termination Value is Paid</u>	<u>Percentage of Purchase Price Payable as Termination Value</u>	
	<u>Type A Item of Equipment</u>	<u>Type B Item of Equipment</u>
1/15/91	56.0454%	--
2/15/91	55.5283	--
3/15/91	55.0088	--
4/15/91	54.4870	--
5/15/91	53.9628	--
6/15/91	53.4362	--
7/15/91	52.9072	--
8/15/91	52.3758	--
9/15/91	51.8420	56.6264%
10/15/91	51.3057	56.1095
11/15/91	50.7669	55.5870
12/15/91	50.2256	55.0619
1/15/92	49.6817	54.5369
2/15/92	49.1355	54.0064
3/15/92	48.5867	53.4732
4/15/92	48.0355	52.9377
5/15/92	47.4819	52.3997
6/15/92	46.9257	51.8593
7/15/92	46.3669	51.3205
8/15/92	45.8056	50.7752
9/15/92	45.2418	50.2274
10/15/92	44.6753	49.6811
11/15/92	44.1062	49.1283
12/15/92	43.5344	48.5729
1/15/93	42.9600	48.0188
2/15/93	42.3830	47.4583
3/15/93	41.8034	46.8951
4/15/93	41.2213	46.3294
5/15/93	40.6364	45.7612
6/15/93	40.0490	45.1904
7/15/93	39.4588	44.6212
8/15/93	38.8660	44.0452
9/15/93	38.2705	43.4667
10/15/93	37.6722	42.8895
11/15/93	37.0711	42.3056
12/15/93	36.4672	41.7190

Date on which  
Termination Value is Paid

Percentage of Purchase Price  
Payable as Termination Value

	<u>Type A Item of Equipment</u>	<u>Type B Item of Equipment</u>
1/15/94	35.8605%	41.1337%
2/15/94	35.2512	40.5416
3/15/94	34.6391	39.9468
4/15/94	34.0242	39.3493
5/15/94	33.4066	38.7492
6/15/94	32.7862	38.1463
7/15/94	32.1629	37.5451
8/15/94	31.5368	36.9368
9/15/94	30.9079	36.3257
10/15/94	30.2760	35.7161
11/15/94	29.6412	35.0994
12/15/94	29.0035	34.4799
1/15/95	28.3628	33.8616
2/15/95	27.7185	33.2363
3/15/95	27.0706	32.6081
4/15/95	26.4190	31.9772
5/15/95	25.7637	31.3434
6/15/95	25.1047	30.7067
7/15/95	24.4475	30.0716
8/15/95	23.7818	29.4292
9/15/95	23.1114	28.7839
10/15/95	22.4482	28.1399
11/15/95	21.7765	27.4887
12/15/95	21.0960	26.8344
1/15/96	20.4267	26.1814
2/15/96	19.7511	25.5211
3/15/96	19.0692	24.8577
4/15/96	18.3808	24.1898
5/15/96	17.7075	23.5228
6/15/96	17.0280	22.8484
7/15/96	16.3637	22.1847
8/15/96	15.6932	21.5138
9/15/96	15.0165	20.8355
10/15/96	14.3551	20.1680
11/15/96	13.6876	19.4931
12/15/96	13.0139	18.8109
1/15/97	.0000	18.1393
2/15/97	--	17.4604
3/15/97	--	16.7742
4/15/97	--	16.0817
5/15/97	--	15.4204
6/15/97	--	14.7531
7/15/97	--	14.1173
8/15/97	--	13.4759
9/15/97	--	.0000

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EQUIPMENT LEASE

Dated as of November 1, 1978

Between

FIRST SECURITY STATE BANK,  
not in its individual capacity but solely as Trustee

LESSOR

And

WINCHESTER AND WESTERN RAILROAD COMPANY

LESSEE

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(WWR Trust No. 78-1)  
(25 Box Cars and 75 Covered Hopper Cars)

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ATTACHMENTS TO EQUIPMENT LEASE:

Schedule A - Description of Items of Equipment,  
Type A and Type B

Schedule B - Certificate of Acceptance

Schedule C - Schedule of Casualty Value

Schedule D - Schedule of Termination Value

## EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of November 1, 1978 between FIRST SECURITY STATE BANK, a Utah banking corporation, not individually but solely as trustee (the "Lessor") under a Trust Agreement dated as of November 1, 1978 (the "Trust Agreement") with DIAL LEASING CORPORATION, an Iowa corporation (the "Trustor"), and WINCHESTER AND WESTERN RAILROAD COMPANY, a Virginia corporation (the "Lessee");

### R E C I T A L S:

A. Pursuant to a Conditional Sale Agreement dated as of November 1, 1978 (the "Conditional Sale Agreement") with Pullman Incorporated (Pullman Standard Division) and Portec, Inc. (collectively the "Manufacturers" and individually a "Manufacturer"), the Lessor has agreed to purchase the equipment referred to below in contemplation that, pursuant to the provisions hereof the Lessee would lease the same from the Lessor.

B. Pursuant to an Agreement and Assignment dated as of November 1, 1978 (the "Assignment") each Manufacturer has assigned its right, security title and interest under the Conditional Sale Agreement to First Security Bank of Utah, National Association, as Assignee (the "Assignee").

C. The Lessee, the Lessor, the Trustor and the Assignee intend to enter into a Participation Agreement dated as of November 1, 1978 (the "Participation Agreement") with Northwestern National Life Insurance Company (the "Permanent Investor"), Lease Investments Trust (the "Interim Investor"), UNIMIN Corporation (the "Guarantor"), providing for the commitment of the Lessor to acquire the equipment described in Schedule A hereto and made a part hereof. Said equipment is divided into two types: box cars and covered hopper cars. The box cars are hereinafter referred to collectively as the "Type A Equipment" and individually as a "Type A Item of Equipment", and the covered hopper cars are hereinafter referred to collectively as the "Type B Equipment" and individually as a "Type B Item of Equipment". The Type A Equipment and the Type B Equipment are hereinafter referred to collectively as the "Equipment" and individually as an "Item of Equipment". Under the Participation Agreement, the Interim Investor will commit to make certain investments for interim periods and the Permanent Investor will commit to make certain investments for a period of 18 years. It is contemplated that the Participation Agreement will provide that such investments will be secured by an

assignment of the Lessor's right, title and interest in and to this Lease and in and to the Equipment pursuant to the Conditional Sale Agreement and the Assignment.

## SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.

1.1. Intent to Lease and Hire. Upon delivery of each Item of Equipment pursuant to the Conditional Sale Agreement by the Manufacturer, the Lessee shall lease and let such Item of Equipment from the Lessor for the rental and on and subject to the terms and conditions herein set forth.

1.2. Inspection and Acceptance. The Lessor will cause each Item of Equipment to be tendered to the Lessee at the place of delivery set forth in Schedule A. Upon such tender, the Lessee will cause an inspector designated and authorized by the Lessee to inspect the same, and, if such Item of Equipment is found to be in good order, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor and the Manufacturer thereof a Certificate of Acceptance (the "Certificate of Acceptance") in the form attached hereto as Schedule B with respect to such Item of Equipment; provided, however, that the Lessee shall not accept and the Lessor shall have no obligation to lease any Item of Equipment delivered after the Outside Delivery Date therefor set forth in Schedule A.

1.3. Certificate of Acceptance. The Lessee's execution and delivery of a Certificate of Acceptance with respect to each Item of Equipment pursuant to Section 1.2 hereof shall conclusively establish that, as between the Lessor and the Lessee, but without limiting or otherwise affecting the Lessee's or the Lessor's rights, if any, against the Manufacturer thereof, such Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Item of Equipment is in good order and condition and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads applicable to new railroad equipment of the character of the Equipment as of the date of this Lease. By execution and delivery of such Certificate of Acceptance, the Lessee represents that it has no knowledge of any such defect.

## SECTION 2. RENTALS AND PAYMENT DATES.

2.1. Rent for Equipment. The Lessee agrees to pay the Lessor the following rent for each Item of Equipment:

(a) Interim Rental. For each Item of Equipment, an amount equal to the Purchase Price (as defined



in the Conditional Sale Agreement) thereof multiplied by the Per Diem Factor (as hereinafter defined) for each day during the period from and including the date of acceptance of delivery of such Item hereunder to, but not including, January 15, 1979 (the "Type A Term Lease Commencement Date") in the case of a Type A Item of Equipment, and September 15, 1979 (the "Type B Term Lease Commencement Date") in the case of a Type B Item of Equipment (said rentals being hereinafter referred to as the "Interim Rental"); and

(b) Fixed Rental. For each Item of Equipment, 216 monthly installments of fixed rental (the "Fixed Rental"), payable in arrears, each in an amount equal to 0.7636% of the Purchase Price thereof.

The term "Per Diem Factor" as of any day shall mean an amount determined by dividing the Prime Rate (as defined in the Conditional Sale Agreement) in effect on such day by 360.

2.2. Rental Payment Dates. The installment of Interim Rental, if any, for each Type A Item shall be due and payable on January 15, 1979 and for each Type B Item shall be due and payable on September 15, 1979. The first installment of Fixed Rental for each Type A Item shall be due and payable on February 15, 1979 and on the 15th day of each month thereafter to and including January 15, 1997. The first installment of Fixed Rental for each Type B Item shall be due and payable on October 15, 1979 and on the fifteenth day of each month thereafter to and including September 15, 1997. If any of the rent payment dates is not a business day, the rent payment otherwise payable on such date shall be payable on the next succeeding business day. For purposes of this Lease, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays on which banks in the States of Connecticut and Utah are authorized or required to close.

2.3. Adjustment of Rentals. In the event that any Type A Items of Equipment are delivered to and accepted by the Lessee under the Lease after December 31, 1978, then the Lessee and the Lessor agree that the Fixed Rentals shall be adjusted to such amount as shall, in the reasonable opinion of the Trustor cause the Trustor's after-tax economic and accounting yields as cash flows (computed on the same assumptions, including tax as were utilized by the Trustor in originally evaluating this transaction) to equal the after-tax economic and accounting yield and cash flows that would have been realized by the Lessor if condition specified had not occurred, and the Casualty Value Termination Values shall similarly be adjusted in amounts reasonably determined by the Trustor; provided, (A) that the Fixed Rental shall in no event be reduced below amounts required to discharge that portion of the Conditional Sale Indebtedness defined in the Conditional Sale Agreement) (other than pre-

thereof required in respect of a Casualty Occurrence or an early termination pursuant to Section 11.4 hereof) and/or interest thereon due and payable on the due date of each such rental payment, and (B) that the Casualty Values and Termination Values shall in no event be reduced below amounts required (when taken together with the Fixed Rental then payable) to discharge that portion of the Conditional Sale Indebtedness and/or interest thereon due and payable on the date on which any Casualty Value or Termination Value shall be due and payable.

2.4. Place and Manner of Rent Payment. The payments to be made by the Lessee under this Lease shall be made as follows:

(a) The installments of Interim Rental shall be paid to the Lessor at the principal office of the Lessor at the address thereof provided for payments in Section 20.2 hereof; provided that in the event either the Lessor or the Assignee shall notify the Lessee in writing that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment to the place designated in such notice or as otherwise designated from time to time in writing by such assignee;

(b) Each installment of Fixed Rental shall be paid to the Lessor at the principal office of the Lessor at the address thereof provided for payments in Section 20.2 hereof; provided that in the event either the Lessor or the Assignee shall notify the Lessee in writing that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment to the place designated in such notice or as otherwise designated from time to time in writing by such assignee;

(c) The entire amount of any payment of Casualty Value or Termination Value pursuant to Section 11 hereof shall be paid to the Lessor (identifying the same as a payment of Casualty Value or Termination Value, as the case may be, relating to "WWR Trust No. 78-1") at the principal office of the Lessor at the address thereof provided for payments in Section 20.2 hereof; provided that in the event either the Lessor or the Assignee shall notify the Lessee in writing that the right to receive payment of such Casualty Value or Termination Value, as the case may be, shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment to the place designated in such notice or as otherwise designated from time to time in writing by such assignee;

(d) The amount of any payment owing to the Lessor or the Trustor pursuant to Sections 6, 10.2, 11.1 (with

respect to public liability insurance) and 20.3 hereof shall be made directly to the party to receive the same without regard to the assignment of this Lease pursuant to Section 16 hereof;

(e) The amount of any interest due in respect of the late payment of any rentals or other amounts pursuant to Section 19 hereof shall be paid to the party and in the manner herein provided to receive said rental or other amount; and

(f) All payments other than those above specified shall be made by the Lessee directly to the party to receive the same unless any such payment has previously been made by the Trustor, the Lessor or its assignee, in which case the Lessee shall reimburse the Trustor, the Lessor or its assignee, as the case may be, directly for such payment.

The Lessee agrees that it will make payments due hereunder by check of the Lessee drawn on a bank located in the continental United States and mailed to the party to receive the same at the address herein provided or at such other address as the Lessee shall have been previously advised in writing.

2.5. Net Lease. This Lease is a net lease and the Lessee's obligation to pay all Interim Rental and Fixed Rental and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of the Lessee against the Lessor or the Trustor under this Lease or otherwise or against any assignee of the Lessor pursuant to Section 16 hereof; nor except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor or the Trustor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment has been returned to the possession of the Lessor (for all purposes of this Lease any Item of Equipment shall not be deemed to have

been returned to the Lessor's possession until all of the Lessee's obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Items of Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or any assignee pursuant to Section 16 hereof for any reason whatsoever.

### SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each Type A Item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such Type A Item of Equipment and, subject to the provisions of Sections 11, 14 and 18 hereof, shall terminate on January 15, 1997. The term of this Lease as to each Type B Item of Equipment shall begin on the date of delivery to and acceptance by the Lessee of such Type B Item of Equipment and, subject to the provisions of Sections 11, 14 and 18 hereof, shall terminate on September 15, 1997.

### SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

4.1. Retention of Title. The Lessor is acquiring legal title to the Equipment as Vendee under the Conditional Sale Agreement (but only upon compliance with all the terms and conditions thereof) and it is understood that the Lessee shall acquire no right, title and interest to the Equipment except hereunder as Lessee notwithstanding the delivery of the Equipment to and the possession and use thereof by the Lessee.

4.2. Duty to Number and Mark Equipment. The Lessee will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Leased from a Bank or Trust Company,  
as Owner-Trustee and Subject to a  
Security Interest recorded with the  
Interstate Commerce Commission"

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will

replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of the new road number to be substituted therefor, which consent and statement previously shall have been delivered to the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

4.3. Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

#### SECTION 5. DISCLAIMER OF WARRANTIES.

THE LESSOR LEASES THE EQUIPMENT, AS-IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY EITHER THE LESSOR OR THE TRUSTOR, EACH EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, (D) THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (E) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the Manufacturer thereof, provided, however, that if at any time an Event of Default (as hereinafter defined) shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Item of Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Item of Equipment or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Item of Equipment. The

Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all Items of Equipment described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

## SECTION 6. LESSEE'S INDEMNITY.

6.1. Scope of Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor (in both its individual and fiduciary capacities), any assignee thereof pursuant to Section 16 hereof (including, without limitation, the Assignee) and the Trustor and their respective successors and assigns from and against:

(a) any and all loss or damage to the Equipment, usual wear and tear excepted; and

(b) any claim, cause of action, damages, liability, cost or expense (including, without limitation, counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to any Item of Equipment or any part thereof, including, without limitation, the construction, purchase, delivery, acceptance, rejection, ownership, sale, leasing, return or storage of any Item of Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessee or any indemnified party), (ii) by reason or as the result of any act or omission (whether negligent or otherwise) of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent, trademark or copyright infringements, or (iv) as a result of claims for negligence or strict liability in tort.

The indemnities and assumptions of liabilities set forth in this Section 6.1 do not guarantee a residual value in the Equipment nor do they guarantee the payment of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) or any interest accrued thereon.

6.2. Continuation of Indemnities and Assumptions. The indemnities and assumptions of liability set forth in this Section 6 shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i), (ii) or (iv) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the

Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Section 13 or 15, as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability.

Section 6.3. Patent Indemnities. The Lessee agrees to indemnify, protect and hold harmless each Manufacturer from and against any and all liabilities, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Manufacturer because of the use in or about the construction or operation of any Item of Equipment to be built by such Manufacturer of any design, formula, system or process specified by the Lessee and not developed or purported to be developed by such Manufacturer, or any article or material specified by the Lessee and not manufactured by such Manufacturer, which infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right. The Manufacturers are hereby designated third party beneficiaries to the undertakings of the Lessee set forth in this Section 6.3.

## SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission and the current Interchange Rules or Supplements thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time) with respect to the use and maintenance of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be altered, added, replaced or modified on any Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, additions, replacements and/or modifications at its own expense and title thereto shall be immediately vested in the Lessor.

## SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. Except as required by the provisions of Section 7 hereof, the Lessee shall not modify any Item of Equipment unless any additions in connection therewith are readily removable and the Lessee shall obtain the prior written authority and approval of the Lessor and any assignee pursuant to Section 16 hereof which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to Section 7 hereof or pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair under this Section 8

shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. The Lessee shall make no other additions or improvements to any Item of Equipment unless the same are readily removable without causing material damage to such Item of Equipment. Title to any such readily removable additions or improvements shall remain with the Lessee. If the Lessee shall at its cost cause such readily removable additions or improvements to be made to any Item of Equipment, the Lessee agrees that it will, prior to the return of such Item of Equipment to the Lessor hereunder, remove the same at its own expense without causing material damage to such Item of Equipment.

#### SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon any Item of Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor or the security interest or other rights of any assignee under Section 16 hereof in and to the Equipment. The Lessee's obligations under this Section 9 shall survive the termination of this Lease.

#### SECTION 10. FILING; PAYMENT OF STATE AND LOCAL TAXES.

10.1. Filing. Prior to the delivery and acceptance of the first Item of Equipment, the Lessee will, at its sole expense, cause this Lease and the Conditional Sale Agreement and the related Assignment (or a financing statement or similar notice thereof if and to the extent permitted or required by applicable law) to be duly filed, recorded or deposited with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303 and in such public offices and within or without the United States as the Lessor or the Assignee may reasonably request and will furnish the Lessor and the Assignee proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Assignee, for the purpose of protecting the Lessor's title to, or the Assignee's security interest in, any Item of Equipment to the satisfaction of the Lessor's or the Assignee's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor and the Assignee proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The



Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and re-recording or depositing and redepositing of any such instruments or incident to the taking of such action.

10.2. Payment of Non-Income Taxes. All payments to be made by the Lessee hereunder will be free of expenses to the Lessor, any assignee under Section 16 hereof (including, without limitation, the Assignee) and the Trustor (the "Indemnitees") for collection or other similar charges and will be free of expense to the Indemnitees with respect to the amount of any local, state, Federal or foreign taxes (other than any United States Federal income tax [and, to the extent that any respective Indemnatee receives credit therefor against its United States Federal income tax liability, any foreign income tax of such Indemnatee] payable by any respective Indemnatee in consequence of the receipt of payments provided herein and other than the aggregate of all state, city or local income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state, city and locality in which such Indemnatee has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement or the Assignment, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all Impositions which may be imposed upon any Item of Equipment or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon any Indemnatee solely by reason of its interest with respect thereto and will keep at all times all and every part of such Item of Equipment free and clear of all Impositions which might in any way affect the interest of any Indemnatee or result in a lien upon any such Item of Equipment; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the advance and reasonable opinion of any Indemnatee, adversely affect the title, property or rights of any Indemnatee; and provided further, however, that the Lessee shall not be required to pay any Imposition or reimburse any person for any loss, cost or expense related to any Imposition (i) attributable to any Item with respect to any period after possession of such Item has been returned to the Lessor or (ii) which is the subject of any lien, charge, security interest or other encumbrance which the Lessee is not required by Section 9 hereof to pay or discharge. If any Impositions shall have been charged or levied

against any Indemnatee directly and paid by such Indemnatee, the Lessee shall reimburse such Indemnatee on presentation of an invoice therefor if such Indemnatee shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for such Indemnatee) or the Lessee shall have approved the payment thereof. Prior to making such payment, such Indemnatee shall promptly notify the Lessee in writing of the Impositions charged or levied, and the Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such Impositions, at its sole expense.

In the event the Lessee may be prohibited by law or is impaired from contesting in its own name any Imposition covered by this Section 10.2 in respect of which the Lessee would otherwise be required to make payments to an Indemnatee pursuant hereto, such Indemnatee shall, upon request and at the expense of the Lessee, take all legal and other appropriate action reasonably requested by the Lessee to contest such Imposition. Such Indemnatee shall not be obligated to take any such action unless the Lessee shall first have indemnified such Indemnatee for all liabilities and expenses which may be entailed therein. The Lessee shall be entitled to any refund (plus interest, if any) received by any Indemnatee or the Lessee in respect of any Imposition paid by the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

In the event any reports with respect to Impositions are required to be made on the basis of individual Items of Equipment, the Lessee will either make such reports in such manner as to show the interests of each Indemnatee in such Items of Equipment or notify each Indemnatee of such requirement and make such reports in such manner as shall be satisfactory to such Indemnatee.

In the event that, during the continuance of this Lease, any Imposition accrues or becomes payable or is levied or assessed (or is attributable to the period of time during which this Lease is in existence) which the Lessee is or will be obligated to pay or reimburse, pursuant to this Section 10.2, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

## SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE OR EARLY TERMINATION.

11.1. Insurance. The Lessee agrees that it will at all times during the term of this Lease and at its own cost and expense keep each Item of Equipment insured against loss by fire, windstorm and explosion and with extended coverage and against such other risks as are customarily insured against by companies owning property of a similar character and engaged in a business similar to that engaged in by the Lessee at not less than the full insurable value (actual replacement value less actual physical

depreciation) thereof, and will maintain general public liability insurance with respect to the Equipment against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than \$1,985,000 per occurrence and \$1,985,000 in the aggregate in any one year. Any such insurance may have applicable thereto deductible provisions to no greater extent than in effect for insurance coverage for equipment similar to the Equipment owned by the Lessee and in no event greater than \$25,000, in the case of public liability insurance, and \$5,000, in the case of property insurance on the Equipment, and may be carried under blanket policies maintained by the Lessee so long as such policies otherwise comply with the provisions of this Section 11.1. All such insurance shall cover both the interest of the Lessor and the Lessee in the Equipment or, as the case may be, shall protect the Lessor and the Lessee in respect of risks arising out of the condition, maintenance, use, ownership or operation of the Equipment and shall provide that losses, if any, in respect of the Equipment shall be payable to the Lessee and the Lessor as their respective interests may appear; provided, however, that upon receipt by the Lessee of notice of the assignment of this Lease and the rents and other sums payable hereunder, as provided in Section 16 hereof, the Lessee shall cause the insurance on the Equipment to provide that the losses, if any, shall be payable (except as provided below) to the Assignee under a standard mortgage loss payable clause, satisfactory to the Lessor and the Assignee, which shall provide that the insurer thereunder waives all rights of subrogation against the Lessor, the Lessee, the Trustor and the Assignee, that ten days' prior written notice of cancellation shall be given to the Assignee and that such insurance as to the interest of the Assignee therein shall not be invalidated by any act or neglect of the Lessor, the Lessee or the Trustor or by any foreclosure or other remedial proceedings or notices thereof relating to the Equipment or any interest therein nor by any change in the title or ownership of the Equipment or any interest therein or with respect thereto, or by the use or operation of the Equipment for purposes more hazardous or in a manner more hazardous than is permitted by such policy. All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as provided in this Lease. The Lessee shall furnish the Lessor with certificates or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal prior to the expiration date of the original policy or policies. All insurance provided for in this Section 11.1 shall be effected with insurance companies approved by the Lessor and the Assignee, which approval shall not be unreasonably withheld.

The proceeds of any insurance received by the Lessor or the Assignee on account of or for any loss or casualty in respect of any Item of Equipment shall be released to the Lessee either (i) upon a written application signed by the President, any Vice

plus an amount equal to the Termination Value of such Items of Equipment as of such Termination Date, together with a premium equal to the following respective percentages of the Termination Value then being prepaid:

<u>Type A Equipment</u>		<u>Type B Equipment</u>	
If Prepaid in the 12-month period beginning <u>January 15</u>	Premium (Percentage of Termination Value)	If Prepaid in the 12-month period beginning <u>September 15</u>	Premium (Percentage of Termination Value)
1991	5.00%	1991	5.00%
1992	4.17%	1992	4.17%
1993	3.34%	1993	3.34%
1994	2.51%	1994	2.51%
1995	1.68%	1995	1.68%
1996	0.83%	1996	0.83%

11.5. Rent Termination. Upon (and not until) payment of all sums required to be paid pursuant to Section 11.3 or 11.4, as the case may be, hereof in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the Casualty Value or the Termination Value, as the case may be, payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

11.6. Disposition of Equipment. The Lessee shall, as agent for the Lessor, dispose of such Item or Items of Equipment for which settlement has been made pursuant to Section 11.3 or 11.4 as promptly as possible at the highest price reasonably obtainable for cash. Any such disposition shall be on an "as-is", "where-is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of, the Lessee (a) may retain all amounts arising from such disposition plus, in the case of a Casualty Occurrence any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence, up to the Casualty Value or, in the case of an early termination pursuant to Section 11.4, up to the Termination Value plus any premium paid pursuant to said Section 11.4, as the case may be, with respect to such Item and (b) shall remit the excess, if any, to the Lessor. In disposing of such Item of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after such disposition from or connected with such Item of Equipment.

11.7. Casualty Value. The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage

of the Purchase Price of such Item of Equipment set forth in the Schedule of Casualty Value attached hereto as Schedule C opposite such date of payment.

11.8. Termination Value. The Termination Value of each Item of Equipment shall be an amount determined as of the Termination Date as provided in Section 11.4 hereof equal to that percentage of the Purchase Price of such Item of Equipment set forth in the Schedule of Termination Value attached hereto as Schedule D for the Termination Date on which such Termination Value is to be paid.

11.9. Risk of Loss. The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to or any early termination pursuant to Section 11.4 hereof in respect of any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value or Termination Value, as the case may be, and all rental installments, premium, if any, and other sums due on and prior to the date of payment of such Casualty Value or Termination Value, as the case may be, in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

11.10. Eminent Domain. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay all installments of rental and other sums shall continue for the duration of such requisitioning or taking. Unless an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute an Event of Default shall have occurred and be continuing, the Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

## SECTION 12. ANNUAL REPORTS.

12.1. Duty of Lessee to Furnish. On or before May 1, 1979 and on May 1 of each year thereafter, the Lessee will furnish to the Lessor, any assignee thereof pursuant to Section 16 hereof (including, without limitation, the Assignee) and the Trustor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the 12 months ending on such December 31 (or since the

date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced. At the request of the Lessor, the Trustor or the Assignee, the Lessee will promptly furnish to each such party an accurate statement describing the insurance coverage, if any, maintained by the Lessee pursuant to Section 11.1 hereof.

12.2. Lessor's Inspection Rights. The Lessor, any assignee thereof pursuant to Section 16 hereof (including, without limitation, the Assignee and any Investor) and the Trustor each shall have the right, at their respective sole cost and expense, by their respective authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm thereto the existence and proper maintenance of the Equipment during the continuance of this Lease.

### SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the term of this Lease or any renewal hereof with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks as the Lessee may designate, for a period not exceeding 90 days and transport the same at any time within such 90-day period to such destination as directed by the Lessor upon not less than 30 days' written notice to the Lessee. As to each such Item of Equipment so returned to Lessor, Lessee shall be in compliance with the provisions of Section 8 hereof. All movement and storage of each such Item is to be at the risk of the Lessee. The cost of storage and transportation of each such Item shall be borne equally by the Lessor and the Lessee; provided, however, that if storage of such Item is obtained at no cost to the Lessee and the Lessor, the cost of transportation payable by the Lessee with respect to such Item shall be reduced by the Fair Market Storage Value of such Item. For purposes of this Section 13, Fair Market Storage Value of an Item shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee of storage tracks similar to those so obtained and an informed and willing lessor of such storage tracks under no compulsion to lease. If the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Storage Value of an Item, such value shall be determined in accordance with the appraisal procedure set forth in Section 18.2 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the

Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. During any such storage period the Lessee shall maintain the Equipment as provided in Section 8 hereof and the Lessee shall maintain the insurance required by Section 11.1 hereof and maintain the Items of Equipment in such manner as the Lessee normally maintains similar equipment owned or leased by it in similar storage circumstances. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment. If this Lease shall not be renewed at the end of the then current term (whether the original or a renewal term), all amounts earned in respect of any Item of Equipment after such current term shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Item of Equipment is not assembled, delivered and stored, as hereinabove provided, on the final day of said current term the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount, if any, equal to the excess of (a) the higher of (i) 1/30 of the Fixed Rental installment which was payable on the most recent payment date therefor pursuant to Section 2.1(b) hereof, or (ii) 1/30 of the monthly Fair Rental Value (determined in the manner provided in Section 18 hereof) over (b) the actual earnings received by the Lessor in respect of such Item pursuant to the next preceding sentence for such day.

#### SECTION 14. DEFAULT.

14.1. Events of Default. Any of the following events shall constitute an Event of Default hereunder:

(a) Default shall be made in the payment of any part of the rental or Casualty Value or Termination Value provided in Section 2 or 11 hereof and such default shall continue for five days;

(b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof;

(c) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement and such default shall continue for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied;

(d) The Guarantor shall default in the obligations or performance of any covenant to be observed or performed by the Guarantor under the Guaranty Agreement or the Participation Agreement, and such default (other than a default in the payment of any part of the rental provided for in Section 2 hereof) shall continue for 30 days after the Guarantor shall have obtained knowledge of the same;

(e) Any representation or warranty made (i) by the Lessee herein or in the Participation Agreement or in any statement or certificate furnished to the Lessor, the Trustor, the Assignee or the Investor pursuant to or in connection with this Lease or the Participation Agreement is untrue in any material respect as of the date of issuance or making thereof and shall continue to be untrue, or (ii) by the Guarantor in or pursuant to or in connection with the Guaranty Agreement executed by the Guarantor in respect of the obligations and liabilities under this Lease or in the Participation Agreement or in any statement or certificate furnished to the Lessor, the Trustor, the Assignee or the Investor pursuant to or in connection with this Lease, the Guaranty Agreement or the Participation Agreement proves untrue in any material respect as of the date of issuance or making thereof and shall continue to be untrue;

(f) The Lessee or the Guarantor shall become insolvent or bankrupt or admit in writing its inability to pay its debts as they mature or shall make an assignment for the benefit of its creditors;

(g) Any proceedings shall be commenced by or against the Lessee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or of the Guarantor under the Guaranty Agreement under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustment of such obligations of the Lessee or the Guarantor, as the case may be) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective within 60 days (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations of the Lessee and the Guarantor shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not



subject to ratification) for the Lessee and/or the Guarantor or for the property of the Lessee and/or the Guarantor in connection with any such proceedings, in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

(h) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by such trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(i) Default shall be made in the payment of the principal of or interest on the indebtedness of the Lessee evidenced by its 8% Bond, dated March 1, 1976, in the original principal amount of \$205,000 payable in ten (10) equal annual installments commencing September 1, 1978.

14.2. Remedies. If any Event of Default has occurred and is continuing, the Lessor or, in the event this Lease shall be assigned to an assignee pursuant to Section 16 hereof, such assignee, at its option, may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including reasonable attorneys' fees and other costs and expenses incurred in such proceedings; or

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises

where any of the Equipment may be located and take possession of all or any of the Items of Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use such Items for any purpose whatever, but the Lessor shall nevertheless have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum with respect to each Item of Equipment which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then Fair Rental Value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of such Item during such period, such present worth to be computed in each case on a basis of an 8% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess of any of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the amount the Lessor reasonably estimates to be the Fair Market Value thereof at such time; provided, however, that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (i) with respect thereto may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the net proceeds of such sale after deducting all costs and expenses of such sale, and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto, including reasonable attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease.

For purposes of Section 14.2 above, the Fair Rental Value for any Item of Equipment shall be determined in the appraisal arrangements specified in Section 18.2(b) hereof and the Fair Market Value for any Item of Equipment shall be determined in a similar manner with appropriate adjustments for sale rather than rental, with any appraisal expenses to be borne by the Lessee; provided that any sale in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Market Value of such Item and any rental in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Rental Value of such Item.

14.3. Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

14.4. Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

14.5. Notice of Event of Default. The Lessee also agrees to furnish to the Lessor, the Trustor and the Assignee, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 14.5 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

## SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1. Lessee's Duty to Return. If the Lessor or any assignee pursuant to Section 16 hereof shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of

delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith assemble and place each such Item of Equipment upon such storage tracks within a 25-mile radius of Chicago, Illinois, Minneapolis, Minnesota, St. Louis, Missouri, or Richmond, Virginia, as the Lessor may designate or, in the absence of such designation, as the Lessee may select;

(b) Provide storage at the risk of the Lessee for each such Item of Equipment on such tracks until the same has been sold, leased or otherwise disposed of by the Lessor; and

(c) Transport any Items of Equipment to any place of interchange on the lines of a railroad within a 25-mile radius of such storage tracks, all as the Lessor may reasonably direct upon not less than 30 days' written notice to the Lessee.

All amounts earned in respect of the Equipment after the date of termination pursuant to Section 14 hereof shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event the Equipment is not assembled, delivered and stored, as hereinabove provided, on the date of termination pursuant to Section 14 hereof, the Lessee shall, in addition to the remedies of the Lessor provided for in Section 14 hereof, pay to the Lessor for each day thereafter an amount equal to the higher of (i) 1/30 of the Fixed Rental installment which was payable on the most recent payment date therefor pursuant to Section 2.1(b) hereof, or (ii) 1/30 of the monthly Fair Rental Value (determined in the manner provided in Section 18 hereof).

15.2. Specific Performance. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

15.3. Lessor Appointed Lessee's Agent. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to the Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item.

## SECTION 16. ASSIGNMENTS BY LESSOR.

This Lease and all rent and other sums due and to become due hereunder may be assigned in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon notice to the Lessee of any such assignment, the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's title, or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of such assignee, the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment, (ii) said assignee shall, if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of said assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor (except those rights, privileges and remedies relating to amounts payable to the Lessor or the Trustor pursuant to Sections 6, 10.2, 11.1 [with respect to public liability insurance] and 20.3 hereof which shall remain enforceable by the Lessor and/or the Trustor, as the case may be), but if no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, said assignee, the Lessor and the Trustor may each exercise their respective rights, privileges and remedies stated in this Lease to be provided for their respective benefits, and (iii) all obligations of the Lessor to the Lessee under this Lease shall be and remain enforceable by the Lessee against, and only against, the Lessor.

It is understood and agreed that the right, title and interest of any such assignee in, to and under this Lease and the rents and other sums due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of the Lessee in and to the Equipment.

## SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

17.1. Lessee's Rights to the Equipment. So long as no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

17.2. Use and Possession. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the quiet use, possession and enjoyment of the Equipment; provided, however, that nothing contained in this Lease shall be deemed to prohibit the use of the Equipment by others in the usual interchange of traffic. Notwithstanding the foregoing, the Lessee will not assign any Item of Equipment to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee agrees that it will not, without the prior written consent of the Lessor, assign this Lease or any of its rights hereunder or sublease any Item of Equipment. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder, all of which shall be and remain those of a principal and not a surety.

17.3. Merger, Consolidation or Acquisition of Lessee. Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation into or with which the Lessee shall have become merged or consolidated, provided that such assignees, successors or transferees shall have duly assumed the obligations of the Lessee hereunder and that they will not, upon the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Lease and that such merger or consolidation or acquisition of properties shall not alter in any way the Lessee's obligations to the Lessor hereunder which shall be and remain those of a principal and not a guarantor.

## SECTION 18. RIGHT OF FIRST REFUSAL; RENEWAL OPTIONS.

18.1. Right of First Refusal. Unless an Event of Default, or any event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, the Lessor shall not, prior to the end of the original term of this Lease for any Type of Equipment (or, if the Lessee has renewed this Lease for a renewal

term pursuant to Section 18.2 hereof, prior to the end of such renewal term), or at any time thereafter, sell, transfer or otherwise dispose of any Item of Equipment of such Type unless:

(a) the Lessor shall have received from a responsible purchaser or purchasers a bona fide offer or offers in writing to purchase in the aggregate all, but not less than all, of the Items of Equipment of such Type;

(b) the Lessor shall have given the Lessee written notice (i) setting forth in detail the identity of such purchaser or purchasers, the proposed purchase price or prices, the proposed date of purchase and all other material terms and conditions of such purchase, including, without limitation, any arrangements for the financing of such purchase known to the Lessor, and (ii) offering to sell all Items of Equipment of such Type to the Lessee upon the same terms and conditions as those set forth in such notice; and

(c) the Lessor shall not have received from the Lessee notice, within 20 days following the notice referred to in clause (b) of this Section 18.1, of its election to purchase all Items of Equipment of such Type upon such terms and conditions.

If the Lessee shall not have so elected to purchase all Items of Equipment of such Type, the Lessor may sell such Items of Equipment at a price and upon other terms and conditions no less favorable to the Lessor than those specified in such notice. Notwithstanding the foregoing provisions of this Section 18.1, the Lessor may, if the Lessee has not renewed this Lease pursuant to Section 18.2 hereof, lease any Item of Equipment of such Type at any time after the end of the original term of this Lease (or, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18.2 hereof, at the end of such renewal term) without first offering to lease the Equipment to the Lessee.

18.2. Renewal Options. Provided that no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall have the following renewal options:

(a) The Lessee shall have the option to renew and extend this Lease as to all, but not less than all, of the Type A Items of Equipment or the Type B Items of Equipment, or both, then leased hereunder for additional renewal terms of three (3) years each upon and subject to the terms and conditions herein contained for the original term of this Lease; provided that the Fixed Rental payable for

and during any such renewal term shall be an amount equal to the Fair Rental Value (as hereinafter defined) of such Items of Equipment. Each renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor written notice of any such election 180 days prior to the commencement of any renewal term provided for in this Section 18.2; and

(b) The Fair Rental Value of an Item of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease. If on or before 90 days prior to the date of commencement of the renewal term elected by the Lessee, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Item of Equipment, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term "Appraiser" shall mean two independent appraisers, one chosen by the Lessor and one chosen by the Lessee, or, if such appraisers cannot agree on the amount of such value within 60 days prior to the date of commencement of the renewal term elected by the Lessee, determined on the basis of an appraisal made by a third appraiser chosen by the American Arbitration Association. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

18.3. Delivery of Equipment. Unless the Lessee has elected to purchase the Type A Items of Equipment or the Type B Items of Equipment, as the case may be, then leased hereunder or to renew this Lease in respect of such Items of Equipment as provided in this Section 18, all of such Items of Equipment shall be returned to the Lessor at the end of the original term, or the then current renewal term, as the case may be, in accordance with Section 13 hereof.

#### SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNTS PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding, any nonpayment of rent due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay also an amount equal



to 11.50% per annum (or the highest lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

## SECTION 20. MISCELLANEOUS.

20.1. Limitations of Liability. It is expressly understood and agreed by and between the Lessor and the Lessee and their respective successors and assigns that this Lease is executed by First Security State Bank, not individually or personally but solely as Trustee under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Trustee, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security State Bank or the Trustor, or for the purpose or with the intention of binding First Security State Bank or the Trustor personally, but are made and intended for the purpose of binding only the Trust Estate as defined in the Trust Agreement, that this Lease is executed and delivered by First Security State Bank solely in the exercise of the powers expressly conferred upon First Security State Bank, as trustee under the Trust Agreement, that actions to be taken by the Lessor pursuant to its obligations hereunder may, in certain instances, be taken by the Lessor only upon specific authority of the Trustor, that, except in the case of gross negligence or wilful misconduct of First Security State Bank or the Trustor, nothing herein contained shall be construed as creating any liability on First Security State Bank or the Trustor, individually or personally, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of, First Security State Bank or the Trustor, to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Lessee and by each and every person now or hereafter claiming by, through or under the Lessee, and that so far as First Security State Bank or the Trustor, individually or personally are concerned, the Lessee and any person claiming by, through or under the Lessee shall look solely to the Trust Estate as defined in the Trust Agreement for the performance of any obligation under this Lease; provided that nothing in this Section 20.1 shall be construed to limit in scope or substance those representations, warranties and agreements of First Security State Bank in its individual capacity set forth in the Participation Agreement. The term "Lessor" as used in this Lease shall include any trustee succeeding First Security State Bank as trustee under the Trust Agreement or the Trustor if the trust created thereby is revoked. Any obligation of the Lessor hereunder may be performed by the Trustor, and any such performance shall not be construed as revocation of the trust created by the Trust Agreement. Nothing contained in this Lease shall restrict the operation of the provisions of the Trust Agreement with respect to its revocation or the resignation or removal of the Trustee thereunder.

20.2. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class, postage prepaid, addressed as follows:

If to the Lessor: First Security State Bank  
c/o First Security Bank of Utah, N.A.  
79 South Main Street  
Salt Lake City, Utah 84111  
Attention: Corporate Trust Department  
  
(with a copy to the Trustor)

If to the Trustor: Dial Leasing Corporation  
207 Ninth Street  
Des Moines, Iowa 50317  
Attention: Mike J. Keller, Esq.

If to the Assignee: First Security Bank of Utah, N.A.  
79 South Main Street  
Salt Lake City, Utah 84111  
Attention: Corporate Trust Department

If to the Lessee: Winchester and Western  
Railroad Company  
c/o UNIMIN Corporation  
Greenwich Office Park Four  
Greenwich, Connecticut 06830  
Attention: Mr. Kevin Crawford,  
Vice President-Finance

If to the  
Guarantor: UNIMIN Corporation  
Greenwich Office Park Four  
Greenwich, Connecticut 06830  
Attention: Mr. Kevin Crawford,  
Vice President-Finance

or addressed to any such party at such other address as such party shall hereafter furnish to such other parties in writing.

20.3. Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, either the Lessor, the Trustor or, in the case of an assignment by the Lessor pursuant to Section 16 hereof, the assignee thereunder may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance. Any payment so made by any such party and all cost and expense (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the party making the same upon demand as additional rent hereunder, with interest at the rate of 11.50% per annum.

20.4. Execution in Counterparts. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

20.5. Law Governing. This Lease shall be construed in accordance with the laws of the State of Virginia; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation.

20.6. Headings and Table of Contents. All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

20.7. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be as to such jurisdiction ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and the corporate seals to be hereto affixed as of the day and year first above written.

FIRST SECURITY STATE BANK,  
not individually but solely as  
Trustee

By \_\_\_\_\_  
Its \_\_\_\_\_

[CORPORATE SEAL]

ATTEST:

\_\_\_\_\_  
Secretary

WINCHESTER AND WESTERN  
RAILROAD COMPANY

By Kevin F. Scauford  
Its TREASURER

[CORPORATE SEAL]

ATTEST:

Mary Jane Lisenby  
Secretary

STATE OF UTAH                    )  
                                  )   SS  
COUNTY OF SALT LAKE        )

On this \_\_\_\_\_ day of December, 1978, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is the \_\_\_\_\_ of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

STATE OF CONNECTICUT        )  
                                  )   SS *Greenwich*  
COUNTY OF FAIRFIELD        )

On this 21<sup>ST</sup> day of December, 1978, before me personally appeared KEVIN F. CRAWFORD, to me personally known, who, being by me duly sworn, says that he is the TREAS of WINCHESTER AND WESTERN RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Tilda B. Fico*  
\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

TILDA B. FICO  
Notary Public, Fairfield County  
My Commission Expires April 1, 1981

DESCRIPTION OF ITEMS OF EQUIPMENT

TYPE A EQUIPMENT

Manufacturer of Type A  
Equipment:

Pullman Incorporated  
(Pullman Standard Division)

Description and Mark and  
Number of Type A Items  
of Equipment:

10 70-ton 50' Box cars, AAR  
Mechanical Designation XP,  
Marked and Numbered WW 2001  
through WW 2010, both inclusive

15 70-ton 50' Box cars, AAR  
Mechanical Designation XM,  
Marked and Numbered WW 2011  
through WW 2025, both inclusive

Estimated Purchase Price  
of Type A Equipment:

\$36,320 per Item (XP)  
\$35,445 per Item (XM)

Maximum Aggregate Purchase  
Price of Type A Equipment:

\$925,000

Place of Delivery:

Bessemer, Alabama

Outside Delivery Date:

January 15, 1979

(WWR Trust No. 78-1)

DESCRIPTION OF ITEMS OF EQUIPMENT

TYPE B EQUIPMENT

Manufacturer of Type B  
Equipment:

Portec, Inc.

Description and Mark and  
Number of Type B Items  
of Equipment:

75 100-ton 3,000 cu. ft. Covered  
Hopper Cars Marked and Numbered  
WW 1001 through WW 1075,  
both inclusive

Estimated Purchase Price  
of Type B Equipment:

\$37,391 per Item

Maximum Aggregate Purchase  
Price of Type B Equipment:

\$2,869,202

Place of Delivery:

Clinton, Illinois

Outside Delivery Date:

September 15, 1979

(WWR Trust No. 78-1)

CERTIFICATE OF ACCEPTANCE  
UNDER EQUIPMENT LEASE

TO: First Security State Bank,  
as Trustee under WWR Trust No. 78-1

I, a duly appointed and authorized representative of Winchester and Western Railroad Company (the "Lessee") under the Equipment Lease dated as of November 1, 1978 (the "Lease") between the Lessor and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery under the Lease of the following Items of Equipment:

TYPE OF EQUIPMENT:

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that the foregoing Items of Equipment are in good order and condition, and appear to conform to the specifications applicable thereto, that the Lessee has no knowledge of any defect in any of the foregoing Items of Equipment with respect to design, manufacture, condition or in any other respect, and that each Item has been labeled by means of a plate or a stencil printed in contrasting colors upon each side of the Item in letters not less than one inch in height as follows:

"Leased from a Bank or Trust Company,  
as Owner-Trustee and Subject to a  
Security Interest Recorded with the  
Interstate Commerce Commission"

The execution of this Certificate will in no way relieve or decrease the responsibility of the Manufacturer for any warranties it has made with respect to the Equipment.

Dated: \_\_\_\_\_, 19\_\_

\_\_\_\_\_  
Inspector and Authorized  
Representative of the Lessee

(WWR Trust No. 78-1)

SCHEDULE B  
(to Equipment Lease)

## SCHEDULE OF CASUALTY VALUE

The Casualty Value for a Type A Item of Equipment or a Type B Item of Equipment, as the case may be, payable on the Interim or any Fixed Rental payment date thereafter for such Item shall mean an amount equal to the percent of the Purchase Price of such Item set forth opposite such date in the following schedule (as the same may be increased pursuant to Annex 1 to this Schedule C):

<u>Date on which Casualty Value is Paid</u>	<u>Percentage of Purchase Price Payable as Casualty Value</u>	
	<u>Type A Item of Equipment</u>	<u>Type B Item of Equipment</u>
1/15/79	87.0096%	--
2/15/79	87.2816	--
3/15/79	87.5569	--
4/15/79	87.8353	--
5/15/79	88.0826	--
6/15/79	88.3327	--
7/15/79	88.5513	--
8/15/79	88.7726	--
9/15/79	88.9965	86.9814%
10/15/79	89.1886	87.3247
11/15/79	89.3830	87.6714
12/15/79	89.5799	88.0215
1/15/80	89.7446	88.2501
2/15/80	89.9114	88.4810
3/15/80	90.0803	88.7141
4/15/80	90.2513	88.9495
5/15/80	90.3951	89.1567
6/15/80	90.5409	89.3659
7/15/80	90.6592	89.5466
8/15/80	90.7792	89.7292
9/15/80	90.9007	89.9135
10/15/80	90.9947	90.0691
11/15/80	91.0899	90.2263
12/15/80	91.1865	90.3851
1/15/81	91.2553	90.5148
2/15/81	91.3251	90.6459
3/15/81	91.3959	90.7784
4/15/81	91.4679	90.9122
5/15/81	91.5155	91.0219
6/15/81	91.5641	91.1327
7/15/81	91.5881	91.2192
8/15/81	91.6127	91.3066
9/15/81	91.6379	91.3950
10/15/81	91.6383	91.4588



Date on which  
Casualty Value is Paid

Percentage of Purchase Price  
Payable as Casualty Value

	<u>Type A Item of Equipment</u>	<u>Type B Item of Equipment</u>
11/15/81	91.6391%	91.5233%
12/15/81	91.6403	91.5885
1/15/82	91.6164	91.6289
2/15/82	91.5927	91.6699
3/15/82	91.5691	91.7114
4/15/82	91.5455	91.7534
5/15/82	91.5007	91.7737
6/15/82	91.4557	91.7945
7/15/82	91.3891	91.7934
8/15/82	91.3222	91.7924
9/15/82	91.2550	91.7916
10/15/82	91.1660	91.7688
11/15/82	91.0764	91.7459
12/15/82	90.9862	91.7229
1/15/83	90.8741	91.6777
2/15/83	90.7610	91.6323
3/15/83	90.6472	91.5865
4/15/83	90.5326	91.5405
5/15/83	90.3997	91.4755
6/15/83	90.2658	91.4101
7/15/83	90.1133	91.3255
8/15/83	89.9597	91.2403
9/15/83	89.8048	91.1544
10/15/83	89.6313	91.0492
11/15/83	89.4563	90.9432
12/15/83	89.2798	90.8363
1/15/84	89.0844	90.7099
2/15/84	88.8874	90.5825
3/15/84	88.6887	90.4540
4/15/84	88.4883	90.3245
5/15/84	88.2729	90.1788
6/15/84	88.0556	90.0319
7/15/84	87.8230	89.8687
8/15/84	87.5883	89.7041
9/15/84	87.3516	89.5381
10/15/84	87.1009	89.3555
11/15/84	86.8479	89.1715
12/15/84	86.5928	88.9858
1/15/85	86.3354	88.7835
2/15/85	86.0759	88.5794
3/15/85	85.8140	88.3736
4/15/85	85.5498	88.1660
5/15/85	85.2834	87.9451
6/15/85	85.0146	87.7223
7/15/85	84.7435	87.4861
8/15/85	84.4700	87.2479
9/15/85	84.1941	87.0075
10/15/85	83.9159	86.7537

Date on which  
Casualty Value is Paid

Percentage of Purchase Price  
Payable as Casualty Value

	<u>Type A Item of Equipment</u>	<u>Type B Item of Equipment</u>
11/15/85	83.6351%	86.4975%
12/15/85	83.3520	86.2392
1/15/86	83.0664	85.9722
2/15/86	82.7783	85.7029
3/15/86	82.4877	85.4313
4/15/86	82.1945	85.1572
5/15/86	81.8988	84.8808
6/15/86	81.6006	84.6019
7/15/86	81.2997	84.3206
8/15/86	80.9962	84.0369
9/15/86	80.6900	83.7507
10/15/86	80.3812	83.4619
11/15/86	80.0697	83.1707
12/15/86	79.7554	82.8768
1/15/87	79.4384	82.5805
2/15/87	79.1187	82.2815
3/15/87	78.7962	81.9799
4/15/87	78.4708	81.6757
5/15/87	78.1426	81.3688
6/15/87	77.8116	81.0592
7/15/87	77.4776	80.7469
8/15/87	77.1408	80.4319
9/15/87	76.8010	80.1141
10/15/87	76.4583	79.7936
11/15/87	76.1125	79.4702
12/15/87	75.7637	79.1440
1/15/88	75.4119	78.8150
2/15/88	75.0571	78.4831
3/15/88	74.6991	78.1482
4/15/88	74.3380	77.8105
5/15/88	73.9737	77.4698
6/15/88	73.6063	77.1261
7/15/88	73.2357	76.7794
8/15/88	72.8618	76.4296
9/15/88	72.4847	76.0769
10/15/88	72.1042	75.7210
11/15/88	71.7205	75.3620
12/15/88	71.3334	74.9998
1/15/89	70.9429	74.6345
2/15/89	70.5491	74.2660
3/15/89	70.1517	73.8943
4/15/89	69.7510	73.5193
5/15/89	69.3467	73.1411
6/15/89	68.9389	72.7595
7/15/89	68.5275	72.3746
8/15/89	68.1125	71.9863
9/15/89	67.6939	71.5946

Date on which  
Casualty Value is Paid

Percentage of Purchase Price  
Payable as Casualty Value

	<u>Type A Item of Equipment</u>	<u>Type B Item of Equipment</u>
10/15/89	67.2717%	71.1995%
11/15/89	66.8457	70.8010
12/15/89	66.4161	70.3989
1/15/90	65.9827	69.9934
2/15/90	65.5465	69.5843
3/15/90	65.1075	69.1716
4/15/90	64.6657	68.7553
5/15/90	64.2209	68.3353
6/15/90	63.7734	67.9117
7/15/90	63.3228	67.4844
8/15/90	62.8694	67.0533
9/15/90	62.4130	66.6185
10/15/90	61.9536	66.1798
11/15/90	61.4911	65.7374
12/15/90	61.0257	65.2910
1/15/91	60.5571	64.8407
2/15/91	60.0867	64.3865
3/15/91	59.6143	63.9284
4/15/91	59.1401	63.4681
5/15/91	58.6638	63.0057
6/15/91	58.1857	62.5413
7/15/91	57.7055	62.0777
8/15/91	57.2233	61.6090
9/15/91	56.7392	61.1381
10/15/91	56.2529	60.6679
11/15/91	55.7647	60.1925
12/15/91	55.2744	59.7150
1/15/92	54.7820	59.2380
2/15/92	54.2876	58.7559
3/15/92	53.7912	58.2715
4/15/92	53.2928	57.7852
5/15/92	52.7924	57.2969
6/15/92	52.2899	56.8066
7/15/92	51.7853	56.3183
8/15/92	51.2787	55.8240
9/15/92	50.7700	55.3277
10/15/92	50.2591	54.8332
11/15/92	49.7461	54.3327
12/15/92	49.2310	53.8301
1/15/93	48.7136	53.3293
2/15/93	48.1943	52.8225
3/15/93	47.6728	52.3135
4/15/93	47.1492	51.8025
5/15/93	46.6235	51.2894
6/15/93	46.0957	50.7742
7/15/93	45.5657	50.2612
8/15/93	45.0336	49.7418

ANNEX 1 TO SCHEDULE C  
(to Equipment Lease)

The percentages set forth in Schedule C have been computed without regard to recapture of the Investment Credit provided for in Section 38 and related sections of the Internal Revenue Code of 1954, as amended. Consequently, the Casualty Value of any Item of Equipment suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and acceptance of such Item shall be increased by the applicable percentage of the Purchase Price set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>	
	<u>Type A Item of Equipment</u>	<u>Type B Item of Equipment</u>
3		
(on or prior to 12/31/78)	20.4082%	
(after 12/31/78)	19.6078	19.6079%
5	13.0720	13.0719
7	6.5358	6.5360

## SCHEDULE OF TERMINATION VALUE

The Termination Value for a Type A Item of Equipment or Type B Item of Equipment, as the case may be, payable on the Interim or any Fixed Rental payment date thereafter for such Item shall mean an amount equal to the percent of the Purchase Price of such Item set forth opposite such date in the following schedule before taking into account any premium, if any, as set forth in Section 11.4 of the Lease:

<u>Date on which Termination Value is Paid</u>	<u>Percentage of Purchase Price Payable as Termination Value</u>	
	<u>Type A Item of Equipment</u>	<u>Type B Item of Equipment</u>
1/15/91	56.0454%	--
2/15/91	55.5283	--
3/15/91	55.0088	--
4/15/91	54.4870	--
5/15/91	53.9628	--
6/15/91	53.4362	--
7/15/91	52.9072	--
8/15/91	52.3758	--
9/15/91	51.8420	56.6264%
10/15/91	51.3057	56.1095
11/15/91	50.7669	55.5870
12/15/91	50.2256	55.0619
1/15/92	49.6817	54.5369
2/15/92	49.1355	54.0064
3/15/92	48.5867	53.4732
4/15/92	48.0355	52.9377
5/15/92	47.4819	52.3997
6/15/92	46.9257	51.8593
7/15/92	46.3669	51.3205
8/15/92	45.8056	50.7752
9/15/92	45.2418	50.2274
10/15/92	44.6753	49.6811
11/15/92	44.1062	49.1283
12/15/92	43.5344	48.5729
1/15/93	42.9600	48.0188
2/15/93	42.3830	47.4583
3/15/93	41.8034	46.8951
4/15/93	41.2213	46.3294
5/15/93	40.6364	45.7612
6/15/93	40.0490	45.1904
7/15/93	39.4588	44.6212
8/15/93	38.8660	44.0452
9/15/93	38.2705	43.4667
10/15/93	37.6722	42.8895
11/15/93	37.0711	42.3056
12/15/93	36.4672	41.7190

Date on which  
Termination Value is Paid

Percentage of Purchase Price  
Payable as Termination Value

	<u>Type A Item of Equipment</u>	<u>Type B Item of Equipment</u>
1/15/94	35.8605%	41.1337%
2/15/94	35.2512	40.5416
3/15/94	34.6391	39.9468
4/15/94	34.0242	39.3493
5/15/94	33.4066	38.7492
6/15/94	32.7862	38.1463
7/15/94	32.1629	37.5451
8/15/94	31.5368	36.9368
9/15/94	30.9079	36.3257
10/15/94	30.2760	35.7161
11/15/94	29.6412	35.0994
12/15/94	29.0035	34.4799
1/15/95	28.3628	33.8616
2/15/95	27.7185	33.2363
3/15/95	27.0706	32.6081
4/15/95	26.4190	31.9772
5/15/95	25.7637	31.3434
6/15/95	25.1047	30.7067
7/15/95	24.4475	30.0716
8/15/95	23.7818	29.4292
9/15/95	23.1114	28.7839
10/15/95	22.4482	28.1399
11/15/95	21.7765	27.4887
12/15/95	21.0960	26.8344
1/15/96	20.4267	26.1814
2/15/96	19.7511	25.5211
3/15/96	19.0692	24.8577
4/15/96	18.3808	24.1898
5/15/96	17.7075	23.5228
6/15/96	17.0280	22.8484
7/15/96	16.3637	22.1847
8/15/96	15.6932	21.5138
9/15/96	15.0165	20.8355
10/15/96	14.3551	20.1680
11/15/96	13.6876	19.4931
12/15/96	13.0139	18.8109
1/15/97	.0000	18.1393
2/15/97	--	17.4604
3/15/97	--	16.7742
4/15/97	--	16.0817
5/15/97	--	15.4204
6/15/97	--	14.7531
7/15/97	--	14.1173
8/15/97	--	13.4759
9/15/97	--	.0000